IN THE

Supreme Court of the United States

OCTOBER TERM 1911

No. 42

UNITED STATES OF AMERICA,

Petitioner,

vs.

LOUIS H. PINK, Superintendent of Insurance of the State of New York, and as Liquidator of the Domesticated United States Branch of the First Russian Insurance Company, Established in 1827; Victor Yermaloff and Others.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY

BRIEF ON BEHALF OF ANDREW DITMAR AND OTHERS, CREDITORS OF THE FIRST RUSSIAN INSURANCE COMPANY, AMICUS CURIAE

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Counsel for Andrew Ditmar and other creditors of the First Russian Insurance Company, Amicus Curiae.

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The memorandum opinion of the Special Term Justice of the Supreme Court, New York County is unreported. The judgment and order was unanimously affirmed by the Appellate Division of the Supreme Court of the State of New York (First Judicial Department) without opinion (R. 57) reported in 259 App. Div. 871. The judgment was unanimously affirmed by a per curiam opinion of the

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All emphasis ours unless otherwise noted.

New York Court of Appeals (R. 71-72) reported in 284 N. Y. 555. The opinion of the New York Court of Appeals in *Moscow Fire Insurance Co.* v. *Bank of New York* is reported in 280 N. Y. 286.

Statement of Facts

The facts are set out fully in the other briefs submitted and we will not burden the Court with a repetition.

Interest of these Amici

This brief is submitted on behalf of more than 300 policyholders and creditors of the First Russian Insurance Company. Though they are parties to the action, they were not joined as parties to the motion by the Superintendent of Insurance, and therefore the brief is submitted amici. But they are parties to this action. They have been pursuing their rights in this litigation for ten years. Their claims, mostly for small amounts, were all allowed and adjudicated prior to the recognition of Russia. They have a vested interest.

Argument

There is no Federal question involved, as the case comes up merely on an order granting summary judgment on the ground that no substantial issue remained to be tried. Under the applicable New York law and practice the decision was right. This Court must affirm.

Petitioner seeks to obtain in this case what the Court has already denied, a reargument of the *Moscow* case. Petitioner is in error in contending that the *Moscow* case was decided by the Court of Appeals on the ground of State public policy, that the President in accepting the Litvinoff Assignment initiated a new Federal policy, or that the enforcement of the applicable New York law is in any sense a hostile act.

As successor to the First Russian, petitioner obtains no rights, since the interest of the First Russian has been disposed of by final judgment.

POINT I

There is no Federal question involved. The motion for summary judgment was properly granted.

After the affirmance by the Court of Appeals in the *Moscow* case (280 N. Y. 286), the Superintendent of Insurance moved for summary judgment dismissing the complaint in this action under Rule 113 of the New York Civil Practice Act. That motion is not in the nature of a demurrer or motion to dismiss for legal insufficiency, where the allegations of the complaint are deemed admitted, but is a motion to be made and opposed on affidavits or other evidence de hors the pleadings. The question to be determined is not in any way the sufficiency of the pleadings, but only whether a substantial issue remains to be tried. If the court determines that there is such an issue, the motion must be denied, the case proceeds to trial. If, on the other hand, the court finds there is no substantial issue, the court must grant the appropriate relief. If the motion is by the plaintiff for summary judgment, such judgment is awarded in advance of the trial; if the motion is by the defendant to dismiss, the complaint is dismissed. The motion is decided on the proof adduced apart from the pleadings themselves.

The petitioner repeatedly asserts that on the instant motion the allegations of the complaint were admitted. It is true that the Superintendent of Insurance also moved under Section 476 of the Civil Practice Act, which is a motion to dismiss for insufficiency, on which the allegations of the complaint are deemed admitted, but the court either ignored or denied that part of the motion. It plainly

appears that only the motion made under Rule 113 was granted. The court said, in granting the motion:

> " * * * for an order dismissing the complaint and awarding summary judgment in favor of the defendant, * * * *pursuant to Rule 113* of the Rules of Civil Practice" (R. 6).

Any review of the court's action on the motion necessitates an examination of the outside evidence adduced. The Superintendent's affidavit showed that a trial would be a matter of supererogation, because the facts would necessarily have to be found to be identical with the *Moscow* case, and, of course, the applicable law would have to be the same. It was incumbent on the petitioner to submit to the court adequate evidence to disprove these contentions. What did it submit?

An affidavit in which none of the issues now attempted to be raised were raised; in which there was no showing of new proof leading to different findings of fact upon the trial; nothing to show that if a trial were had there would be or could be a different result from the result reached in the *Moscow* case, but only a statement that petitioner had applied for a writ of certiorari in the *Moscow* case and a request that the motion be held in abeyance until this Court had passed upon the *Moscow* case. In other words, practically nothing but a request for an adjournment.

There was an utter failure on the part of petitioner to comply with the requirement of Rule 113, that the court must be shown by outside evidence that a substantial issue exists necessitating a trial. On the record before the New York court there was patently nothing to try, and consequently there was patently nothing left for the court to do but grant the motion. Petitioner specifically so admitted in its brief to the Court of Appeals, page 8:

> "Plaintiff-appellant believes that the trial court was correct in its interpretation of the Moscow case, and that adherence to the decision in that case would require dismissal of the present complaint."

Thus the only question before the court was, and the sole question here is, whether under New York law and practice a substantial issue remained for trial. Even could this question, by any stretch of the imagination, be considered to include a Federal question, this Court, on this record, would be constrained to affirm. It is because the petitioner recognizes that as long as the *Moscow* decision stands this judgment must be affirmed that it now seeks to obtain in this case what this Court has already denied, a reargument of the *Moscow* case.

But the record here presents no case for a reargument, nor does it disclose basis for arguments advanced in the 149 printed pages of petitioner's brief. It is not fair to this Court to ask that the complex questions posed in that brief be decided on this record. The petitioner has brought many other cases predicated on the Litvinoff Assignment, in which on a proper record these questions may at the appropriate time be properly presented and decided by this Court. Petitioner should be remanded to them.

But were this Court to feel that on this record the door is open to a consideration of the petitioner's contentions, we submit that they must fail.

Petitioner's contention is that by the Soviet confiscatory decrees the Soviet secured title in invitum to the assets situated here of the domesticated branches of Russian insurance companies; that when the Court of Appeals decided the *Moscow* case on the extraterritorial intendment of the Soviet nationalization decrees, and also on the application of the New York Insurance Law, the Court did not mean what it said and did not decide on either of these grounds, but refused to give effect to the Soviet decrees only on the ground that they violated New York public policy; that the court had no right to deny effect to the Soviet decrees on that ground because the Executive in accepting the Litvinoff Assignment had formulated and announced an "executive" policy approving of and forbidding any objection to the application of the confiscatory

decrees to property situated here; that the public policy of the State of New York was in conflict with the Federal public policy and that to follow the public policy of the State of New York would be a hostile act against the Soviet Government, which might even lead to war.

Petitioner is in error as to all these contentions.

POINT II

The Court of Appeals did not decide the *Moscow* case on the ground of State public policy, but decided it on an interpretation of the Russian law itself and on the New York Insurance Law.

Says the petitioner (p. 65):

> "The decision was expressly based on the sole ground of the local public policy."

Says the Court of Appeals (*United States* v. *Moscow*, 280 N. Y. 286 at p. 314):

> "The courts below have made the proper choice *not because enforcement of confiscatory decrees of property situated elsewhere is contrary to our public policy*, but because under the law of this state such confiscatory decrees do not affect the property claimed here."

> "We deal here with a class of property and a juristic person sui generis" (at p. 307).

> "The Insurance Law requires that before a foreign insurance corporation is permitted to do business here there must be a definite separation and division of its property and even of its juristic personality. . . . Thus the property of the United States branch of a foreign insurance company acquires a character of its own. That character is 'dependent' upon the law of this State. The property from its nature is subject to the laws of this State, and both the property and the 'complete and separate organization' analogous to a domestic corporation are immune from the control of any foreign power" (at p. 310).

It would seem plain from the above that the court's decision in the *Moscow* case was based on the specific provisions of the Insurance Law and the character that the property acquired thereunder, rather than on public policy, except, of course, as every law of every jurisdiction is necessarily inspired by and governed by its public policy, from constitutional provisions down to statutes of limitation.

Petitioner would have us believe that there is something new and unprecedented in the aspect from which the Court of Appeals viewed the status of the domesticated branches of all foreign insurance companies. Petitioner is in error. The view taken by the Court of Appeals in the *Moscow* case is in accord with old established New York law.

> "Such corporations are deemed to be, for most legal purposes and as parties to actions, domestic corporations."
>
> *Standard Marine Ins. Co.* v. *Verity*, 243 App. Div. 639, 640.

> "It (foreign insurance corporation) owes to the law of its creation its franchise to be a corporation; but it owes to the law of this state the privilege of doing business within our borders. In exercising that privilege it may be dealt with as if it were in truth a domestic corporation. This view of its position has support in recent decisions. In Morgan v. Mutual Benefit Life Ins. Co. (189 N. Y. 447, 454) we held that for many purposes a foreign insurance company, transacting business here, must be 'treated as a domestic insurance company and as domiciled in this state.'"
>
> *Comey* v. *United Surety Co.*, 247 N. Y. 268, 274 (per Cardozo, J.)

> "We think that the Legislature in allowing these foreign companies to do business in this State and country intended to treat the domestic agency largely as a complete and separate organization, to place it on a parity with domestic corporations."
>
> *Matter of People* (*Norske Lloyd*), 242 N. Y. 148, 159.

The New York Insurance Law, however, was only one and an additional ground upon which the decision was predicated in the *Moscow* case. The other and equally conclusive ground was that the Soviet confiscatory decrees themselves were not intended to have extraterritorial effect, nor to operate on property situate beyond the borders of Soviet Russia. Foreign law is a question of fact in New York (*Genet* v. *Del. & Hud. Canal Co.*, 163 N. Y. 173, 177). This construction of the Soviet law in the *Moscow* case had been so found as a fact by the Referee and his finding had been affirmed by the Appellate Division, which held:

> "The evidence adduced before the referee sustains his finding 'that the Soviet decrees of confiscation against the assets of Russian insurance companies were not intended to apply to such assets as were situated outside of Russia and in the United States, but were intended to apply only to such assets as were situated in Russia.'"
>
> *Moscow Fire Ins. Co.* v. *Bank of New York*, 253 App. Div. 644, 646.

These findings were binding on the Court of Appeals unless there was no evidence at all to sustain them, and, we submit, are equally binding on this Court (*General Pictures Co.* v. *Electric Co.*, 304 U. S. 175, 178; *New York ex rel. Water Co.* v. *Maltbie*, 303 U. S. 158, 160; *Waters-Pierce Oil Co.* v. *Texas* (*No. 1*), 212 U. S. 86, 97; *Miedreich* v. *Lauenstein*, 232 U. S. 236, 243; *Interstate Amusement Co.* v. *Albert*, 239 U. S. 560, 566).

There was ample evidence to sustain them: the *Moscow* record is replete with evidence that the Soviet decrees were not intended to apply extraterritorially. The scope of this brief does not permit of an analysis of that record, but we respectfully refer the Court to the full discussions on the point in the respondent's briefs submitted here on the *Moscow* appeal.

We may say, however, that the Soviet Government, as the Court of Appeals points out in the *Moscow* case (p. 307), "in official circulars and regulations itself gave similar interpretation to such decrees", and "In a long series of decisions the courts of England have held that decrees by the Soviet government nationalizing the business of banking or insurance, cancelling obligations of banking and insurance companies and confiscating their property were not *intended* to apply to property of the companies with situs outside of Russia, or to obligations to be performed outside of Russia" (emphasis the court's) (ibid. at p. 306).*

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* Some of the Circulars and Regulations and English decisions mentioned by the Court of Appeals are:

Circular No. 194, issued September 20, 1923, by the Commissariat of Justice, where it is stated:

> "Proprietary rights of citizens of the R. S. F. S. R. enforcible outside the R. S. F. S. R. are governed by the laws of the country where they are to be enforced."

Circular No. 42, issued by the Soviet People's Commissariat for Foreign Affairs, where it is stated:

> "The Law on Property established by the decrees of the Russian Soviet Government does, therefore, determine only legal relations pertaining to property rights as arise on the territory of the R. S. F. S. R. Legal relations pertaining to property rights whereof the subject-matter is situated outside the territory of the R. S. F. S. R. and is not connected with such territory cannot be governed outside the territory of the R. S. F. S. R. by Russian Law and are—irrespective of the nationality of the persons entitled to such rights, be they even Russian Citizens—subject to the effects of Local Law."

These circulars were construed as Russian law by Hill, J., in *The Jupiter*, P. (1927) 129, at 144; aff'd Court of Appeal, P. (1927) 250. In the latest declaration of the British courts on the subject, *In re Russian Bank for Foreign Trade, Chancery Decisions*, 1933, p. 745, Maugham, J., at p. 759, states:

> "As will be seen later, the Soviet Government does not itself assert that the nationalization decrees have an extra-territorial effect."

And then goes on to say at page 767:

> "The decrees in question could not according to our laws have the effect of extinguishing the debt, if locally situate here, or of transferring it to the Soviet Republic. This follows, I think, from the decision of Hill, J., and the Court of Appeal in The Jupiter. It is interesting to note that the same view is taken by the R. S. F. S. R. itself in a circular dated April 12, 1922, and in a circular issued by the People's Commissariat of Justice to all District Courts dated September 26, 1923, which are set out in the elaborate judgment of Hill, J., above referred to. These circulars show that the Soviet Government does not regard the nationalizing decrees as having any extra-territorial effect even as against Russian citizens."

These circulars were similarly interpreted by the French courts: *Etat Russe v. Cie Russe Ropit*, Gazette du Palais, 1925, 2, 167; aff'd Gazette du Palais, 1926, 1, 169.

Petitioner's brief skates deftly away from discussion of this ground of decision in the *Moscow* case. Thus petitioner says:

> "The complaint alleges and the motion admits that the Soviet nationalization decrees were intended to apply to the assets of the First Russian Insurance Company in New York."

But, as we have shown, a motion under Rule 113 does not admit the allegations of the complaint.

Again, petitioner says:

> "There are other considerations which compel the conclusion that the court below did not pass upon the issue of the scope of the Soviet decrees. The respondent did not raise this issue for purposes of the motion. Indeed, it is extremely doubtful under New York law whether he could have raised the issue on the actual pleadings filed. That the court below did not decide this question of practice is shown by the fact that the sole authority for its decision was the Moscow case, in which the question was not involved."

The draftsman must have written the above with his tongue in his cheek. The moving affidavit on the motion for summary judgment said:

> "that no decree *could possibly have intended to apply to business conducted here*, and if so intended, could not be binding here'" (Downes' affidavit on the motion to dismiss [fol. 41]).

But, beyond that, the entire motion was based on the issues and findings in the *Moscow* case, where hundreds of pages of testimony were taken, where the referee's opinion, the Appellate Division's opinion and the Court of Appeals' opinion are all directly predicated on the intendment of the Soviet decrees. How, under such circumstances, petitioner can say that the question was not involved in the *Moscow* case passes our comprehension.

POINT III

In accepting the Litvinoff Assignment the Executive did not formulate any new or different Federal public policy as to the application of Soviet confiscatory decrees to property here.

Assuming that the *Moscow* decision was based on New York public policy, petitioner says this public policy went into the discard because the President of the United States, in accepting the Litvinoff Assignment, initiated a new "executive" public policy by virtue of which we adopted as our public policy the Soviet policy of confiscation, and no objection may be interposed to it in the courts.

We cannot imagine a statement more unfair to the President of the United States. He is the last man to overturn the settled public policy of the United States against confiscation, embedded in our Constitution and one of the "four freedoms" of our form of government. If it could be conceived that he had intended such a thing, through the means of a mere executive agreement, it is inconceivable that he would not in plain language have said so, rather than have left so unprecedented a reversal of our traditional policy to implication and inference.

Our own Government in times of peace is without power to take without compensation the property of alien friends and give it to others in defiance of the final judgment of the courts administering it. That the President should initiate a policy permitting a foreign government to do it is unthinkable.

If it could be conceived that he intended such a thing, there would be the gravest doubt of his power to do so.*

* This has heretofore been the view of the Executive Department itself: In 1883 the Canadian Parliament authorized the erection of a bridge across Niagara River, work not to begin "until an act of the Congress of the United States of America has been passed, consenting to or approving the bridging

Fortunately, we do not have to consider either his intendment or his power in the premises. This Court has already defined the rights acquired under the Litvinoff Agreement. In *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, after quoting the relevant parts of the assignment and the President's acceptance thereof, it is said at page 143:

> "There is nothing in either document to suggest that the United States was to acquire or exert any greater rights than its transferor or that the President by mere executive action purported or intended to alter or diminish the rights of the debtor with respect to any assigned claims, or that the United States, as assignee, is to do more than the Soviet Government could have done after diplomatic recognition—that is, collect the claims in conformity to local law. Even the language of a treaty wherever reasonably possible, will be construed so as not to override state laws or to impair rights arising under them."

Even clearer is the holding in petitioner's "Ark of the Covenant", *United States* v. *Belmont*, 301 U. S. 324, where the court said:

> "Neither the allegations of the bill of complaint, nor the diplomatic exchanges, suggest that the United States has either recognized or declared that any state policy is to be overridden."

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of said river, or until the Executive of the United States has consented to and thereof approved." The President asked the Attorney General for his opinion as to the President's power in the premises. The Attorney General replied (17 Op. Atty. Gen. 523):

> "The President can perform no act *officially* except it be authorized by the Constitution and laws. His consent in the present case, not being thus authorized, would be an extra official act."
>
> "I beg to refer, in this connection, to an opinion of Attorney-General Cushing, in a case in which a similar question arose. A legislative act of a British colony provided for certain proceedings for the arrest and punishment of deserting seamen of any foreign nation, where the government of such nation or state had by its proper officer signified its desire that the act might be enforced against the crews or ships belonging to such nation or state. The inquiry was, whether the President of the United States, as such, had authority, by so signifying his desire, to give general effect to that act. It was held that he had not. 'Neither the Constitution of the United States, nor the treaties between this Government and that of the United Kingdom, nor any acts of Congress (observes Mr. Cushing) empower the President *to communicate to the law of a foreign state authority or effect, which it does not possess proprio vigore as a law of such foreign state*" (6 Opin. 209).

After quoting the Litvinoff Assignment and the President's acceptance, the opinion continued:

> "There is nothing in either document to suggest that the United States was to acquire or exert any greater rights than its transferor, or that the President, by mere executive action, purported or intended to alter the laws and policy of any state in which the debtor of an assigned claim might reside, or that the United States, as assignee, is to do more than the Soviet government could have done after diplomatic recognition—that is, collect the claims in conformity with those laws."

There was no dissent from this holding in the other opinion in the *Belmont* case and the subsequent unanimous holding of the same court to the same effect in the *Guaranty Trust* case, supra, establishes beyond cavil that the acceptance of the Litvinoff Assignment did not propound any new executive policy and was neither meant to nor did override State law.

But we say that the President went further and actually confirmed and protected the judgments of the courts and the rights of litigants as to property situate here of Russian nationalized corporations. We say that was the purpose and the only purpose of the last paragraph of the Litvinoff Assignment.

It will be recalled that by the first paragraph of that assignment the Soviet Government releases and assigns all amounts admitted to be due or that may be found to be due it, and the second paragraph reads as follows:

> "The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:
>
> "(a) judgments rendered or that may be rendered by American courts insofar as they relate to property, or rights, or interests therein, in which the Union of

Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

"(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof."

This is an unusual undertaking. The rights which the Soviet further agreed not to make claim to could not have been the same rights that had already been assigned in the first paragraph, for if they had already been assigned, of course the Soviet could make no claim to them. Does one assign a chose in action and then agree not to lay claim to it? Does one convey title and agree not to attack the title? That would not be expected where the contracting parties are the humblest citizens. It is unthinkable where the contracting parties are the heads of mighty nations.

The conclusion seems inescapable that the claims referred to in the first paragraph of the letter, and thereby assigned to the United States and "the property, rights, or interest" of Russian nationals referred to in the paragraph marked (a), were not the same rights. But the rights referred to in paragraph (a) clearly include the right which is the subject of this litigation, since it is a right in which a Russian national "may have had or may claim to have an interest" covered by the final judgment of an American court. That right was not assigned to the United States Government.

In this light the purpose of the last paragraph of the assignment becomes clear. At the recognition of Russia there were two kinds of Russian property here.

1. Immense sums running into millions, which had been deposited and were the property of prior Russian governments. Also many claims of the Russian Government

against various American corporations for breach of contract, the claim of the Russian Volunteer Fleet, a former Russian governmental corporation (not a private Russian corporation like an insurance company)* and the funds here of various ephemeral governments established during the Revolution in parts of Russia (*Nankivel* v. *Omsk*, 237 N. Y. 150).

These claims the Soviet had acquired by succession to former Russian governments, not by confiscation:

2. There was the property here of Russian corporations, most of which had been nationalized.

The intent of the Litvinoff Assignment was plainly that the Russian governmental funds as to which there had never been confiscation were to be assigned and collected by the United States, and by the last paragraph of the Litvinoff Assignment the other funds, nearly all of which had been in constant litigation and subject to many orders

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* For example:

Several million dollars in the National City Bank as to which a suit was then pending in the United States District Court for the Southern District of New York, entitled *"State of Russia* v. *Bankers Trust Company and National City Bank, defendants"* (69 Fed. [2d] 44).

Again, there was a claim for $4,976,722.78, with interest, being monies deposited by the former Russian Government with the Guaranty Trust Company of New York (*United States* v. *Guaranty Trust Co.*, 304 U. S. 126);

There was also a claim for $15,000 against the Guaranty Trust Company of New York arising out of a contract between the Russian Government and the Morton Trust & Tractor Company;

There was also a claim of the Russian Government for approximately $1,050,000 against the Curtiss Aeroplane and Motor Company;

There was also a claim for approximately $384,118.07, with interest, for monies due from the Canadian Pacific Railways Company under contracts with the Russian Government;

There was also a claim for approximately $1,412,532.35, with interest, on account of the amounts due from the United States Shipping Board for the requisition of Hulls Nos. 6 and 7 of the Russian Volunteer Fleet; a claim for approximately $218,750 originally deposited with the Guaranty Trust Company as escrow money on Hull No. 6 under contract for the purchase of the said hull by the Russian Volunteer Fleet; a claim for the sum of approximately $23,643.75 on account of balance due from the United States Shipping Board in connection with the charter of certain steamers of the said Russian Volunteer Fleet. (Record, *United States* v. *Bank of New York*, 296 U. S. 364, p. 19.)

and judgment of the courts,* were left diplomatically undisturbed. In *State of Russia* v. *National City Bank*, 69 F. (2d) 44, cert. den. 299 U. S. 563, the court, in speaking of the assignment, said:

> "Moreover, it is apparent that the intent was to assign all the claims of the Soviet Government to the United States, and it agreed to leave undisturbed diplomatically final non-appealable judgments and decrees of the American courts touching Russian affairs and non-judicial acts done in good faith by and with the officials of the previously recognized government of Russia, or its nationals, relating to property, credits or obligations of any government of Russia or nationals thereof."

Thus it is apparent that in accepting the Litvinoff Assignment the President protected creditors of nationalized Russian corporations rather than despoiled them and that he initiated no new Federal policy than the policy which had existed from the founding of the Republic, and which this court in numberless decisions has been especially jealous to defend and preserve.

Russian Volunteer Fleet v. *United States*, 282 U. S. 481.

Yick Wo v. *Hopkins*, 118 U. S. 356.

Baglin v. *Cusinièr*, 221 U. S. 580.†

Petitioner, however, claims that *United States* v. *Belmont*, 301 U. S. 324, overturns the long line of this court's decisions to which reference has been made, and claims

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* *Sokoloff* v. *National City Bank*, 239 N. Y. 158; *Petrogradsky M. K. Bank* v. *National City Bank*, 253 N. Y. 23; *Friede* v. *National City Bank*, 250 N. Y. 288; *Shosberg* v. *New York Life Ins. Co.*, 244 N. Y. 482; *Severnoe Sec. Corp.* v. *London & Lancashire Ins. Co.*, 255 N. Y. 129; *First Russian Insurance Co.* v. *Beha*, 240 N. Y. 601; *Russian Reinsurance Co.* v. *Stoddard*, 240 N. Y. 149; *Matter of People, Russian Reinsurance Co.*, 255 N. Y. 415, 423; *Matter of People, Northern Insurance Co.*, 255 N. Y. 433; *Matter of People, Second Russian Insurance Co.*, 255 N. Y. 437; *Matter of People, First Russian Insurance Co.*, 255 N. Y. 440, and a host of others.

† The rule against taking of property under foreign law in violation of local law finds expression in the decisions of all State courts. Typical are *State* v. *Bush*, (12 Ala. App. 309) 1915, p. 311.

> "The principle that no man shall be deprived of his liberty or property except by 'the law of the land' is said to be more ancient than

that the *Belmont* case, which it has cited many times and to which it has devoted pages of its brief, lays down the rule that the Soviet decrees of confiscation have legal authority to override the rights of creditors here, and that they have become the supreme law of this land, with the same force and effect as they are the law of Soviet Russia.

The claim that this Court has ever so held is startling, and necessitates an analysis of the Belmont decision, to ascertain whether such is really the holding.

In the *Belmont* case the Government had started an action at law to recover a bank deposit which the Petrograd Metal Company, a Russian corporation, had had with August Belmont. The Belmont executors moved to dismiss the complaint for insufficiency. The question being the sufficiency of the complaint, its allegations had to be taken as true, including the allegation that the Soviets had acquired title to the property of the Petrograd Metal Company here. In the *Belmont* case there were no adverse claims to the fund. So far as the record showed there were no creditors of the Petrograd Metal Company. There were no stockholders. Not even the corporation itself defended.

The Belmonts, asserting no claims against the deposit themselves, occupied the position of a naked custodian

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written constitutions, 'and breathes so palpably of exact justice that it needs no formulation in the organic law'."

Ex parte Dickenson, 29 S. C. 453 (1888).

"It has been frequently held in this State that the laws of a foreign State governing the disposition of an insolvent's State have no application here, proprio vigore, to property of the insolvent resident in another State, for the obvious reason that the laws of a State are necessarily territorial, so far as other independent States are concerned."

Baldwin v. *Hosmer*, 101 Mich. 119 (1894) at p. 133.

"It is a principal now generally acted upon by the Courts that a receiver or other trustee appointed in another state will be permitted, on the principle of comity, to bring an action in the domestic forum for the purpose of collecting the assets of the insolvent for distribution, in accordance with the laws of the jurisdiction within which the receiver has been appointed, when to do so will not contravene the rights of citizens of the state in which the action is brought. But the rule of comity is never allowed to operate when it will contravene the rights of a citizen of the state where the action is being taken."

against whom the United States Government, as the assignee of the government of the domicile of the defunct corporation, made a demand for its assets. In that situation the element of confiscation is so emasculated as to lose its vigor. This Court held there was no reason of public policy which prevented giving effect to the Soviet decrees.

In both the majority and minority opinions the court, however, went to the most unusual lengths to limit their holding to a suit against a custodian only, and to prevent what they said in the *Belmont* case from being applied to a case of a different nature where there were creditors and adverse claimants.

The majority said:

> "It does not appear that respondents have any interest in the matter beyond that of a *custodian*. Thus far no question under the Fifth Amendment is involved.
>
> "It results that the complaint states a cause of action and that the judgment of the court below to the contrary is erroneous. In so holding, we deal only with the case *as now presented and with the parties now before us*. We do not consider the status of adverse claims, if there be any, of others not parties to this action. And *nothing we have said* is to be construed as foreclosing the assertion of any such claim to the fund involved, by intervention or other appropriate proceeding. We decide only that the complaint alleges facts sufficient to constitute a cause of action *against the respondents*."

The minority said:

> "As *respondent debtor* may not challenge the effect of the assignment to the United States, the judgment is rightly reversed. But as the reversal is without prejudice to the rights of any other parties to intervene, they should be left free to assert, by intervention or other appropriate procedure, such claims with respect to the amount due as are in accordance with

the laws and policy of New York. There is no occasion to say anything now which can be taken to foreclose the assertion by such claimants of their rights under New York law."

The use which the Government is now trying to make of the *Belmont* case is a clear defiance of the caveat contained in both opinions.

Ever since the *Belmont* case the Government has repeatedly tried to advance it as a panacea for every sickness that is inherent in the contention that our courts will permit a foreign decree to reach over and confiscate property situate in this country, but this interpretation of that decision has been rejected by every court to which it has been submitted.

This Court rejected it in *United States* v. *Guaranty Trust Co.*, 304 U. S. 126.

The Court of Appeals rejected it in *United States* v. *President & Directors of the Manhattan Company*, 276 N. Y. 396, as follows:

> "We find that the decision in the Belmont case goes no further than to hold, in so far as it may be applicable here, that recognition must be given to the validity of the confiscation decree by which the assets of the insurance company located in this country became the property of the Soviet Government and by it were passed on by assignment to the plaintiff *in so far only as the act of confiscation did not interfere with the rights and equities of our nationals in such property and of adverse claimants thereto to the extent that our courts may be opened to them for the assertion of their claims.* To the extent indicated the assignment of November 16, 1933, from the Soviet Government to plaintiff has been held valid by the decision in the Belmont case."

In a case involving the Belmont funds (*Meyer* v. *Petrograd Metal Works*, N. Y. Law Journal, p. 1163, October 17, 1938, aff. 256 App. Div. 1077, appeal denied 281 N. Y. 887) Mr. Justice May said:

> "Two opinions were handed down by that court (United States Supreme Court, in U. S. v. Belmont) upon the reversal. Both opinions painstakingly pointed out that the decision was being limited to the very pleadings and parties before the court. The only parties before the court were the Belmont estate, as a mere depositary of the funds without claim or offset against it, and the government.
>
> "There is no doubt that the United States Supreme Court did not in any way determine the rights of this receiver or any other claimant to the fund, but expressly preserved those rights to them."

The *Belmont* case is, therefore, no authority at all for the proposition that there is a Federal law as opposed to State law under which the Soviet Government could obtain by confication rights to property in New York paramount to those of creditors and stockholders, and contrary to the law of the State.

POINT IV

Application of New York law is not a hostile act.

Perhaps the most farfetched of all petitioner's contentions is that the enforcement of the New York public policy as to assets situated in the forum would constitute a hostile act.

For many years and in many parts of the world the courts have been called upon to construe the effect of the Russian confiscatory decrees. In every case that we have been able to find, every court to whom the question has been presented has decided that the Soviet confiscatory decrees of nationalization were incompetent to pass title to assets situate beyond Soviet borders. The courts have

been unanimous in so holding, irrespective of whether the question was presented to them before or after recognition of Soviet Russia by their respective governments.*

Typical of the rationale of such decisions are the following:

> "The French courts will not give effect in France to the legislative acts of a foreign corporation *even though recognized* when they are contrary to French public policy and will not give any effect to those decrees which in opposition to the principle contained in Article 545 of the Civil Code, pronounce the pure and simple confiscation of private property.
>
> "From which it follows that the Soviet decrees cannot invest the Russian State with the rights which the Russian Transport Company possessed in France."
>
> *Cockerill* v. *La Union et Phenix Espagnol Cour d'appel de Paris*, (Ire. Ch.) 23 Decembre, 1930.

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*Among the jurisdictions where such holdings have been rendered, the following may be noted:

The House of Lords, after recognition, allowed the English branch of a nationalized Russian company to recover its English assets by liquidation under the Companies Act (*Russian and English Bank* v. *Baring Bros.*, [1936] A. C. 405); the Court of Cassation, after recognition, ruled that a Soviet decree of nationalization "cannot be enforced by a French court of law either directly or indirectly" (*Etat Russe* v. *Cie Russe Ropit*, 55 Clunet 674 [1928]; after recognition, the Supreme Court of Denmark refused to allow the Soviet to recover assets in Denmark claimed by reason of the Soviet's confiscatory decrees (*Counsel of Russian Orthodox Community in Copenhagen* v. *Legation of R. S. F. S. R.*, [1925-26] Ann. Dig. of Int. L. Cases 24); the court of last resort in Sweden ruled that a czarist corporation may recover its assets in that country despite dissolution at home by the Soviet (*Nebolsine, Recovery of Foreign Assets of Nationalized Russian Corporations*, 39 Yale L. J. 1130, 1146); the Mixed Arbitration Court for the determination of Franco-German claims after the World War held Soviet decrees which nationalized the Russian branch of a French bank inoperative to discharge the bank from liability to a German depositor (*E. Meyer & Son* v. *Credit Lyonnais*, Tribunaux Arbitraux Mixtes, Recueil des Décisions, Vol. 3, p. 857; Second Part, July 30, 1923); the Mixed Arbitration Court for the determination of Anglo-German claims made the same decision in the converse case of an English corporation whose branch in Russia, subsequently nationalized, had contracted a debt to a German bank (*Deutsche Bank A. G.* v. *Scottish Herring Import and Export Co., Ltd.*, Tribunal Arbitral Mixte Anglo-Allemand [1st Division], 1st December 1926, 15th and 22nd, July, 1927, Case No. 2293).

See also: *Switzerland: Wilbuschewitz* v. *Zurich* (1926); 53 Clunet 1110, 1113 (Trib. Fed.) (1925-26); Ann. Dig. of Int. L. Cases 96 (before recognition). *Germany: Ginsberg* v. *Deutsche Bank* (1928); Juristiche Wochenschrift 1232, 1233 (Kammergericht, Berlin) (after recognition). *England: The Jupiter* (No. 3), 1927, p. 122; aff'd Ct. of Appeal, 1927, p. 250 (after recognition).

"Effective as such legislation may be within the limits of Russian territory, it cannot determine the ownership of property locally situate in this country" (England).

Employers Liability v. *Sedgwick*, (1926) 1 K. B. L.

The New York courts have held to the same effect:

Petrogradsky M. K. Bank v. *National City Bank*, 253 N. Y. 23 (before recognition).

James & Co. v. *Second Russian Insurance Co.*, 239 N. Y. 248 (before recognition);

Vladikavkazsky Ry. Co. v. *New York Trust Co.*, 263 N. Y. 369, 264 N. Y. 595 (after recognition).

In *James & Co.* v. *Second Russian Insurance Co.*, supra, the court said:

"As to the Soviet decree, we think its attempted extinguishment of liabilities is *brutum fulmen*, in England as well as here, and this whether the government attempting it has been recognized or not. Russia might terminate the liability of Russian corporations in Russian courts or under Russian law. Its fiat to that effect could not constrain the courts of other sovereignties, if assets of the debtor were available for seizure in the jurisdiction of the forum (*Barth* v. *Backus*, 140 N. Y. 230; *Matter of People* [*City Equitable Fire Ins. Co.*], 238 N. Y. 147, 152; cf. *Matter of Barnett's Trusts*, 1902, 1 Ch. 847)."

In *Vladikavkazsky Ry. Co.* v. *New York Trust Co.*, supra, the court said:

"It is hardly necessary to state that the arbitrary dissolution of a corporation, the confiscation of its assets and the repudiation of its obligations by decrees, is contrary to our public policy and shocking to our sense of justice and equity. That the confiscation decree in question, clearly contrary to our public policy, was enacted by a government recognized by us, affords no controlling reason why it should be enforced in our courts. (*Baglin* v. *Cusenier*, 221 U. S. 580.)"

The Federal courts have held to the same effect:

Lehigh Valley R. Co. v. *State of Russia*, 21 F. (2d) 396, 401.

United States v. *Bank of New York & Trust Co.*, 10 Fed. Supp. 269.

In the case last cited Judge Coxe, speaking in the Government's suit to obtain the identical funds which are the subject of the instant suit, said:

> "The confiscatory decrees of the Soviet Government were clearly opposed to the public policy of the United States. *Russian Volunteer Fleet* v. *U. S.*, 282 U. S. 481, 491, 492; *Petrogradsky M. K. Bank Co* v. *National City Bank*, 253 N. Y. 23; *Vladikavkazsky Ry. Co.* v. *N. Y. Trust*, 263 N. Y. 369; *Baglin* v. *Cusenier*, 221 U. S. 580. They were utterly ineffective to reach the properties of the Moscow and Northern Companies in this country; *Vladikavkazsky Ry. Co.* v. *N. Y. Trust* (*supra*); *Baglin* v. *Cusenier* (*supra*); *The Jupiter*, 96 L. I. P. 62 (1927); *Employees Liability* v. *Sedgwick*, 1927, A. C. 95; and the subsequent recognition of the Soviet Government in no way changed the confiscatory nature of the decrees in so far as these particular funds were concerned. *Lehigh Valley* v. *State of Russia*, 21 Fed. (2) 396, 401; *Vladikavkazsky Ry. Co.* v. *N. Y. Trust* (*supra*)."

In none of these forums did the court take the view that the enforcement of its public policy and other municipal law as to assets within the jurisdiction would constitute a hostile act.

As we have seen, the Soviet authorities themselves did not consider that their decrees applied to property situated extraterritorially. They have never protested or taken umbrage at such decisions, nor indeed could they.

No government, so far as we have been able to ascertain, has ever expected courts of other countries to enforce foreign laws which have conflicted with the laws of the forum. The refusal to do so is no hostile act. Indeed, a foreign

government has access to the courts at all only as a matter of comity (*The Supphire*, 11 Wall. 164, 167; *Russian Republic* v. *Cibrario*, 235 N. Y. 255, 262), and foreign laws of any kind are given effect only as a matter of amenity and not as a matter of right (*Huntington* v. *Atrill*, 146 U. S. 657). Indeed, some foreign laws are not given effect at all. It is well known that we do not enforce the penal (*Wisconsin* v. *Pelican*, 127 U. S. 265) or tax laws (*Colorado* v. *Herbeck*, 232 N. Y. 71) of a foreign state, and as a general matter we do not enforce any of their public laws (*Frenkel* v. *L'Urbaine*, 251 N. Y. 243).

No one, of course, disputes the doctrine that recognition of a foreign state gives retroactive effect to the acts of a foreign government *done in its own domicile*. That is the doctrine of cases like *Luther* v. *Sagor*, (1921) 3 K. B. 532, and *Oetjen* v. *Central Leather*, 246 U. S. 297, so often quoted by the petitioner. But a sharp line of distinction has always been drawn between giving recognition to foreign laws, to acts done and to titles acquired in the foreign jurisdiction, and giving effect to those laws as to property situated in the jurisdiction of the forum if the foreign law conflicts with the law of the forum. It is this distinction which the petitioner persistently ignores.

Of course, the courts will not sit in judgment over the acts of a foreign power done within its own confines as to property situated in its own confines, but enforcement of the local law, which all courts are sworn to enforce, over property locally situate is not to pass judgment on the acts of a foreign power. Indeed, to compel enforcement as to local property of any and all laws which a foreign government might pass regardless of any conflict between foreign and local law would be to introduce endless confusion. Nobody could know the status of foreign owned property locally situate. If this doctrine is to be introduced into our law it will indeed be welcomed with open arms by all foreign jurisdictions. Especially the totalitarian countries would like nothing better than to have all of

their discriminatory, confiscatory, punitive and racial laws and decrees enforced here. Foreign governments do not expect such a thing, let alone regard its denial as a hostile act. When a foreign sovereign goes into the local forum it must take the common fare of the court.

In *Queen of Holland* v. *Drukker*, (1928) Ch. 877, 884, the court said in dismissing the action:

> "* * * as the sovereign State has submitted to jurisdiction by coming here I am in a position to order the sovereign State to pay the costs of the action."

In *Otho, King of Greece* v. *Wright*, 6 Dowl. 12 (1837), the court rejected the argument that the exaction of costs from a foreign sovereign would be an exercise of authority contrary to the comity of nations and to the courtesy displayed by independent sovereigns toward each other. At page 17 the court said:

> "If a foreign prince sends over here to enforce his alleged rights in our courts, he must be subjected to the ordinary rules to which other suitors are liable, and more particularly in commercial dealings."

In *Republic of Honduras* v. *Soto*, 112 N. Y. 310 (1889), the New York court pointed out that the Republic of Honduras, though a recognized foreign government, fell under the category of non-resident persons obliged to give security. In *Republic of Costa Rica* v. *Erlanger*, (1875) L. R. 1 Ch. D. 171, 174, Blackburn, J., said that a foreign sovereign plaintiff "should, so far as the thing can be done, be put in the same position as a body corporate". To the same effect is *Republic of Peru* v. *Weguelin*, (1875) L. R. 20, Eq. 140, 141.

In *King of Spain* v. *Hullett*, (1833) 7 Bligh N. S. 359, Lord Brougham said (p. 392):

> "The right of the King of Spain in respect of privilege in the courts of England, is not greater than that

of any of his subjects. If he can bring his privilege with him, why may not his subjects also? One objects to answer upon oath; another may object to a trial by a jury of tradesmen. But if the King is recognized in the character of a suitor, must he not be content with the common fare of the court? * * * The more the question is discussed the more clear it appears."

Even a domestic sovereign takes the status of a private litigant.

"When the United States comes into court to assert a claim, it so far takes the position of a private suitor as to agree by implication that justice may be done with regard to the subject-matter. The absence of legal liability in a case where, but for its sovereignty it would be liable does not destroy the justice of the claim against it."

United States v. *The Thekla*, 266 U. S. at 339, 40.

"When the United States comes into court and institutes a suit for redress, not based on any infringement of its sovereignty and not for any violation of its governmental prerogatives, and submits a claim wholly in the nature of a private litigant, it, by implication, waives any immunity as sovereign and its adversary is entitled to set up any defense which would be available to him were his opponent another citizen instead of the government."

United States v. *Moscow-Idaho Seed Co.*, 92 F. (2d) 170, 173.

POINT V

As successor to the First Russian Insurance Company, petitioner obtains no rights, since the interest of the First Russian has been disposed of by final judgment.

Petitioner now claims that the only relief it seeks is not title to the assets of the First Russian but merely to be recognized as its successor, with such rights as the

First Russian Insurance Company would have had had it not been dissolved. This must be an afterthought. The relief hitherto sought has consistently been the seizure of all of the assets of the First Russian and the taking of them from the possession of the Superintendent, but if petitioner now wishes to modify its demands and merely step into the shoes of the despoiled insurance company it will not be in better case. Any rights the First Russian Company ever had to the funds were admittedly subject to the Insurance Law and the disposition of its assets by the New York courts acting under that law. Such disposition was made by the courts long ago in a proceeding in rem, concluded long prior to Russian recognition and binding in every way upon the First Russian Insurance Company, its successors and assigns (255 N. Y. 415).

It is elementary that the Government can have no greater right to the fund than its assignor had (*United States* v. *Buford*, 3 Pet. 12). Equally, it is patent that the Soviet Government could acquire by confiscation only such rights therein as the First Russian Insurance Company had.

What, therefore, were the rights which the First Russian itself had to the fund in question?

It is undisputed that the res now in suit consists of what is left of securities originally deposited here by the First Russian Insurance Company under an express trust, pursuant to the requirements of New York law following its license to do business here.

Such assets of foreign insurance companies are subject to seizure by the Superintendent of Insurance in liquidation proceedings and to their ultimate disposition by the court at the conclusion of such proceedings.

It is therefore evident that the interest from the beginning of the First Russian Insurance Company in the fund so deposited here was not an unconditional title or even an unconditional right to possession, but, on the contrary, was purely a reversionary interest in what remained, if anything, after the disposition of the assets by the court in possible liquidation proceedings.

Obviously the First Russian Insurance Company itself could not have withdrawn or disposed of these funds even after payment of its creditors until the court had relinquished possession thereof. As Chief Justice Hughes well pointed out in *United States v. Bank of New York and Trust Co. et al.*, 296 U. S. 463, in speaking of the identical res:

> "The court still had control of the property and necessarily had the pertinent equitable jurisdiction to decide what should be done with it."

Acting under this equitable jurisdiction, the court did decide what should be done with it.

It ordered the Superintendent of Insurance to proceed with the present liquidation: *Matter of People (First Russian)*, 255 N. Y. 415.

Hence nothing remained to revert to the First Russian Insurance Company at any stage of the proceedings. The order entered on the remittitur of the Court of Appeals is res adjudicata against the First Russian Insurance Company, and particularly against the Soviet Government.

The law in this connection is most aptly stated in *United States* v. *Bank of New York and Trust Co.*, 72 F. (2d) 876:

> "* * * in the interregnum between the establishment of a foreign government in power and its recognition by this government, * * * whatever has been done in the courts with legal finality * * * must be regarded as *res adjudicata* and valid as against the world. * * *"

Therefore, as far as these New York assets were concerned, there was never left any equity or reversionary interest for the Soviet nationalization decree to confiscate. There was nothing left which the First Russian Insurance Company itself could have obtained. The Soviet Government would be in worse case in a court of equity than even the First Russian, as the direct cause of the liquidation of he First Russian here was the fact that the Soviet Government had confiscated its property in Russia.

The Soviet Government may not come into a court of equity and enrich itself through its own wrong. The maxim that "he who seeks equity must do equity" never had a better application.

The record here does not justify, nor do the limits of this brief permit, a discussion of all the issues raised in the *Moscow* case, and for a full analysis of them we respectfully refer to the briefs filed by the respondents with this Court on the argument of the *Moscow* case. They demonstrate, we submit, that on both law and fact the decision below must be affirmed.

Long ago a great Chief Justice of this Court, John Marshall, in *Fletcher* v. *Peck* (6 Cranch 87, 135), said:

> "It may be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation?"

His pronouncement for this Court one hundred years ago will not be departed from now.

CONCLUSION

The writ should be dismissed or the judgment below should be affirmed.

Respectfully submitted,

SAMSON SELIG,
Counsel for Andrew Ditmar and other creditors of the First Russian Insurance Company, Amicus Curiae.

SUPREME COURT OF THE UNITED STATES.

No. 42.—October Term, 1941.

The United States of America, Petitioner, vs. Louis H. Pink, Superintendent of Insurance of the State of New York, et al. On Writ of Certiorari to the Supreme Court of the State of New York.

[February 2, 1942.]

Mr. Justice Douglas delivered the opinion of the Court.

This action was brought by the United States to recover the assets of the New York branch of the First Russian Insurance Co. which remained in the hands of respondent after the payment of all domestic creditors. The material allegations of the complaint were in brief as follows:

The First Russian Insurance Co., organized under the laws of the former Empire of Russia, established a New York branch in 1907. It deposited with the Superintendent of Insurance, pursuant to the laws of New York, certain assets to secure payment of claims resulting from transactions of its New York branch. By certain laws, decrees, enactments and orders in 1918 and 1919 the Russian Government nationalized the business of insurance and all of the property, wherever situated, of all Russian insurance companies (including the First Russian Insurance Co.), and discharged and cancelled all the debts of such companies and the rights of all shareholders in all such property. The New York branch of the First Russian Insurance Co. continued to do business in New York until 1925. At that time respondent, pursuant to an order of the Supreme Court of New York, took possession of its assets for a determination and report upon the claims of the policyholders and creditors in the United States. Thereafter all claims of domestic creditors, *i.e.*, all claims arising out of the business of the New York branch, were paid by respondent, leaving a balance in his hands of more than $1,000,000. In 1931 the New York Court

of Appeals (255 N. Y. 415) directed respondent to dispose of that balance as follows: first, to pay claims of foreign creditors who had filed attachment prior to the commencement of the liquidation proceeding and also such claims as were filed prior to the entry of the order on remittitur of that court; and second, to pay any surplus to a quorum of the board of directors of the company. Pursuant to that mandate, respondent proceeded with the liquidation of the claims of the foreign creditors. Some payments were made thereon. The major portion of the allowed claims, however, were not paid, a stay having been granted pending disposition of the claim of the United States. On November 16, 1933, the United States recognized the Union of Soviet Socialist Republics as the *de jure* Government of Russia and as an incident to that recognition accepted an assignment (known as the Litvinov Assignment) of certain claims.[1] The Litivnov Assignment was in the form of a letter, dated November 16, 1933, to the President of the United States from Maxim Litvinov, People's Commissar for Foreign Affairs, reading as follows:

"Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Government of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claims with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or

[1] See Establishment of Diplomatic Relations with the Union of Soviet Socialist Republics, Dept. of State, Eastern European Series, No. 1 (1933) for the various documents pertaining to recognition.

interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof."

This was acknowledged by the President on the same date. The acknowledgement, after setting forth the terms of the assignment, concluded:

"I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet."

On November 14, 1934, the United States brought an action in the federal District Court for the Southern District of New York, seeking to recover the assets in the hands of respondent. This Court held in *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463, that the well settled "principles governing the convenient and orderly administration of justice require that the jurisdcition of the state court should be respected" (p. 480); and that whatever might be "the effect of recognition" of the Russian Government, it did not terminate the state proceedings. p. 479. The United States was remitted to the state court for determination of its claim, no opinion being intimated on the merits. p. 481. The United States then moved for leave to intervene in the liquidation proceedings. Its motion was denied "without prejudice to the institution of the time-honored form of action". That order was affirmed on appeal.

Thereafter the present suit was instituted in the Supreme Court of New York. The defendants, other than respondent, were certain designated policy holders and other creditors who had presented in the liquidation proceedings claims against the corporation. The complaint prayed, *inter alia*, that the United States be adjudged to be the sole and exclusive owner entitled to immediate possession of the entire surplus fund in the hands of the respondent.

Respondent's answer denied the allegations of the complaint that title to the funds in question passed to the United States and that

the Russian decrees had the effect claimed. It also set forth various affirmative defenses—that the order of distribution pursuant to the decree in 255 N. Y. 415 could not be affected by the Litvinov Assignment; that the Litvinov Assignment was unenforceable because it was conditioned upon a final settlement of claims and counter claims which had not been accomplished; that under Russian law the nationalization decrees in question had no effect on property not factually taken into possession by the Russian Government prior to May 22, 1922; that the Russian decrees had no extraterritorial effect, according to Russian law; that if the decrees were given extraterritorial effect, they were confiscatory and their recognition would be unconstitutional and contrary to the public policy of the United States and of the State of New York; and that the United States under the Litvinov Assignment acted merely as a collection agency for the Russian Government and hence was foreclosed from asserting any title to the property in question.

The answer was filed in March, 1938. In April, 1939 the New York Court of Appeals decided *Moscow Fire Ins. Co.* v. *Bank of New York & Trust Co.*, 280 N. Y. 286. In May, 1939 respondent (but not the other defendants) moved pursuant to Rule 113 of the Rules of the New York Civil Practice Act and § 476 of that Act for an order dismissing the complaint and awarding summary judgment in favor of respondent "on the ground that there is no merit to the action and that it is insufficient in law". The affidavit in support of the motion stated that there was "no dispute as to the facts"; that the separate defenses to the complaint "need not now be considered for the complaint standing alone is insufficient in law"; that the facts in the *Moscow* case and the instant one, so far as material, were "parallel" and the Russian decrees the same; and that the *Moscow* case authoritatively settled the principles of law governing the instant one. The affidavit read in opposition to the motion stated that a petition for certiorari in the *Moscow* case was about to be filed in this Court; that the motion was premature and should be denied or decision thereon withheld pending the final decision of this Court. On June 29, 1939, the Supreme Court of New York granted the motion and dismissed the complaint "on the merits", citing only the *Moscow* case in support of its action. On September 2, 1939, a petition for certiorari in the *Moscow* case was filed in this Court. The judgment in that case was affirmed here by an equally divided Court. 309 U. S. 624. Subsequently

the Appellate Division of the Supreme Court of New York affirmed, without opinion, the order of dismissal in the instant case. The Court of Appeals affirmed with a *per curiam* opinion (284 N. Y. 555) which after noting that the decision below was "in accord with the decision" in the *Moscow* case stated:

"Three of the judges of this court concurred in a forceful opinion dissenting from the court's decision in that case, but the decision left open no question which has been argued upon this appeal. We are agreed that without again considering such questions this court should, in determining title to assets of First Russian Insurance Company, deposited in this State, apply in this case the same rules of law which the court applied in the earlier case in determining title to the assets of Moscow Fire Insurance Company deposited here."

We granted the petition for certiorari because of the nature and public importance of the questions raised.

First. Respondent insists that the complaint in this action was identical in substance and sought the same relief as the petition of the United States in the *Moscow* case, and that his answer set up the same defenses as were successfully sustained against the United States by the defendants in that case. He also maintains that both parties agreed on the motion for summary judgment that the decision in the *Moscow* case governed this cause, leaving no issues to be tried. We agree with those contentions. It is in accord not only with the motion papers but also with the ruling of the New York Court of Appeals that the *Moscow* case "left open no question which has been argued upon this appeal." In view of that ruling we are not free to inquire, as petitioner suggests, into the propriety under New York practice of grounding the motion for summary judgment on the record in the *Moscow* case. That is distinctly a question of state law on which New York has the last word.

But it does not follow, as respondent urges, that the writ should be dismissed as improvidently granted. The *Moscow* case is not *res judicata* since respondent was not a party to that suit. *Stone* v. *Farmers' Bank of Kentucky*, 174 U. S. 409; *Rudd* v. *Cornell*, 171 N. Y. 114, 127-128; *St. John* v. *Fowler*, 229 N. Y. 270, 274. Nor was our affirmance of the judgment in that case by an equally divided court an authoritative precedent. While it was conclusive and binding upon the parties as respects that controversy (*Durant* v. *Essex Co.*, 7 Wall. 107), the lack of an agreement by a majority of the Court on the principles of law involved prevents it from

being an authoritative determination for other cases. *Hertz* v. *Woodman*, 218 U. S. 205, 213-214.

The upshot of the matter is that we now reach the issues in the *Moscow* case insofar as they are embraced in the pleadings in this case. And there is no reason why we cannot take judicial notice of the record in this Court of the *Moscow* case. *Bienville Water Supply Co.* v. *Mobile*, 186 U. S. 212, 217; *Dimmick* v. *Tompkins*, 194 U. S. 540, 548; *Freshman* v. *Atkins*, 269 U. S. 121, 124.

Second: The New York Court of Appeals held in the *Moscow* case that the Russian decrees[2] in question had no extraterritorial effect. If that is true, it is decisive of the present controversy. For the United States acquired under the Litvinov Assignment only such rights as Russia had. *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 143. If the Russian decrees left the New York assets of the Russian insurance companies unaffected, then Russia had nothing here to assign. But that question of foreign law is not to be determined exclusively by the state court. The claim of the United States based on the Litvinov Assignment raises a federal question. *United States* v. *Belmont*, 301 U. S. 324. This Court will review or independently determine all questions on which a federal right is necessarily dependent. *United States* v. *Ansonia Brass & Copper Co.*, 218 U. S. 452, 462-463, 471; *Ancient Egyptian Order* v. *Michaux*, 279 U. S. 737, 744-745; *Broad River Power Co.* v. *South Carolina*, 281 U. S. 537, 540; *Pierre* v. *Louisiana*, 306 U. S. 354, 358. Here title obtained under the Litvinov Assignment depends on a correct interpretation of Russian law. As in cases arising

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[2] The three decrees on which the United States placed primary emphasis (apart from the one set forth in note 3, *infra*) were described in the findings of the referee in the *Moscow* case as follows:

"88. The decree of November 18, 1919 on the annulment of life insurance contracts abolished insurance of life in all its forms in the Republic and annulled all contracts with insurance companies and savings banks with respect to the insurance of life, capital and income.

"89. The decree of the Soviet of People's Commissars dated March 4, 1919, on the liquidation of obligations of State enterprises, provided that stock certificates and shares of joint stock companies, whose enterprises have been either nationalized or sequestered, are annulled and also provided that such enterprises are free from the payment of all debts to private persons and enterprises which have arisen prior to the nationalization of these enterprises, including payments on bond loans with the exception only of wages due to workers and employees.

"90. The decree of the Soviet of People's Commissars dated June 28, 1918 provides in Article I that the commercial and industrial enterprises enumerated therein, which are located within the boundaries of the Soviet Republic, together with all their capital and property, regardless of what the latter may consist, are declared the property of the Republic."

under the full faith and credit clause (*Huntington* v. *Attrill*, 146 U. S. 657, 684; *Adam* v. *Saenger*, 303 U. S. 59, 64), these questions of foreign law on which the asserted federal right is based are not peculiarly within the cognizance of the local courts. While deference will be given to the determination of the state court, its conclusion is not accepted as final.

We do not stop to review all the evidence in the voluminous record of the *Moscow* case bearing on the question of the extraterritorial effect of the Russian decrees of nationalization, except to note that the expert testimony tendered by the United States gave great credence to its position. Subsequent to the hearings in that case, however, the United States, through diplomatic channels, requested the Commissariat for Foreign Affairs of the Russian Government to obtain an official declaration by the Commissariat for Justice of the R.S.F.S.R. which would make clear, as a matter of Russian law, the intended effect of the Russian decree[3] nationalizing insurance companies upon the funds of such companies outside of Russia. The official declaration, dated November 28, 1937, reads as follows:

"The People's Commissariat for Justice of the R.S.F.S.R. certifies that by virtue of the laws of the organs of the Soviet Government all nationalized funds and property of former private enterprises and companies, in particular, by virtue of the decree of November 28, 1918 (Collection of Laws of the R.S.F.S.R., 1918, No. 86, Article 904), the funds and property of former insurance companies, constitute the property of the State, irrespective of the nature of the property, and irrespective of whether it was situated within the territorial limits of the R.S.F.S.R. or abroad."

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[3] Relevant portions of the Insurance Decree dated November 28, 1918, translated in accordance with the findings of the referee in the *Moscow* case, are:

"603. On the organization of the insurance business in the Russian Republic.

"(1) Insurance in all its forms, such as: fire insurance, insurance on shipments, life insurance, accident insurance, hail insurance, livestock insurance, insurance against failure of crops, etc. is hereby proclaimed as a State monopoly.

"Note. Mutual insurance of movable goods and merchandise by the cooperative organizations is conducted on a special basis.

"(2) All private insurance companies and organizations (stock and share holding, also mutual) upon issuance of this decree are subject to liquidation; former rural* (People's Soviet) and municipal mutual insurance organizations operating within the boundaries of the Russian Republic are hereby proclaimed the property of the Russian Socialist Federated Soviet Republic.

"(3) For the immediate organization of the insurance business and for the liquidation of parts of insurance institutions, which have become the property of the Russian Socialist Federated Soviet Republic, a Commission is es-

The referee in the *Moscow* case found, and the evidence supported his finding, that the Commissariat for Justice has power to interpret existing Russian law. That being true this official declaration is conclusive so far as the intended extraterritorial effect of the Russian decree is concerned. This official declaration was before the court below though it was not a part of the record. It was tendered pursuant to § 391 of the New York Civil Practice Act as amended by L. 1933, c. 690.[4] In New York it would seem that foreign law must be found by the

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tablished under the Supreme Soviet of National Economy, consisting of representatives of the Supreme Soviet of National Economy, the People's Commissariats of Commerce and Industry, Interior Affairs, the Commissar of Insurance and Fire Prevention, Finances, Labor, and State Control, and of Soviet Insurance Organizations (People's Soviet and Municipal Mutual).

"Note. The same Commission is charged with the liquidating of private insurance organizations, all property and assets of which, remaining on hand after their liquidation, shall become the property of the Russian Socialist Federated Soviet Republic.

"(4) The above-mentioned reorganization and liquidation of existing insurance organizations and institutions shall be accomplished not later than the first day of April 1919.

"(8) The present decree comes into force on the day of its publication.

"'zemskie."

The referee in the *Moscow* case found that upon publication of this decree all Russian insurance companies were prohibited from engaging in the insurance business in Russia; that they became subject to liquidation and were dissolved; that all of their assets in Russia became the property of the State; that on publication of the decree, the directors of the companies lost all power to act as directors or conservators of the property or to represent the companies in any way; and that the Russian Government became the statutory successor and domiciliary liquidator of companies whose property was nationalized.

[4] That section reads:

"A printed copy of a statute, or other written law, of another state, or of a territory, or of a foreign country, or a printed copy of a proclamation, edict, decree or ordinance, by the executive power thereof, contained in a book or publication purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the judicial tribunals thereof, is presumptive evidence of the statute, law, proclamation, edict, decree or ordinance. The unwritten or common law of another state, or of a territory, or of a foreign country, may be proved as a fact by oral evidence. The books of reports of cases adjudged in the courts thereof must also be admitted as presumptive evidence of the unwritten or common law thereof. The law of such state or territory or foreign country is to be determined by the court or referee and included in the findings of the court or referee or charged to the jury, as the case may be. Such finding or charge is subject to review on appeal. In determining such law, neither the trial court nor any appellate court shall be limited to the evidence produced on the trial by the parties, but may consult any of the written authorities above named in this section, with the same force and effect as if the same had been admitted in evidence."

court (or in case of a jury trial, binding instructions must be given), though procedural considerations require it to be presented as a question of fact. *Fitzpatrick* v. *International Railway Co.*, 252 N. Y. 127; *Petrogradsky M. K. Bank* v. *National City Bank*, 253 N. Y. 23. And under § 391 as amended it is clear that the New York appellate court has authority to consider appropriate decisions interpreting foreign law even though they are rendered subsequent to the trial. *Los Angeles Investment Securities Corp.* v. *Joslyn*, 282 N. Y. 438. We can take such notice of the foreign law as the New York court could have taken.[5] *Adam* v. *Saenger, supra.* We conclude that this official declaration of Russian law was not only properly before the court on appeal but also that it was embraced within those "written authorities" which § 391 authorizes the court to consider, even though not introduced in evidence on the trial. For while it was not "printed", it would seem to be "other written law" of unquestioned authenticity and authority within the meaning of § 391.

We hold that so far as its intended effect[6] is concerned the Russian decree embraced the New York assets of the First Russian Insurance Co.

Third: The question of whether the decree should be given extraterritorial effect is of course a distinct matter. One primary issue raised in that connection is whether under our constitutional system New York law can be allowed to stand in the way.

The decision of the New York Court of Appeals in the *Moscow* case is unequivocal. It held that "under the law of this State such confiscatory decrees do not affect the property claimed here" (280 N. Y. 314); that the property of the New York branch acquired a "character of its own" which was "dependent" on the law of New York (p. 310); that no "rule of comity and no act of the United States government constrains this State to abandon any part of its control or to share it with a foreign State" (p. 310); that although the Russian decree effected the death of the parent company, the situs of the property of the New York branch was in New York; and that no principle of law forces New York to forsake the method of distribution authorized in the earlier appeal (255 N. Y. 415) and to hold that "the method which in 1931 con-

[5] Hence the denial of the motion of the United States to certify the official declaration as part of the record of the *Moscow* case in this Court (281 N. Y. 818) would seem immaterial to our right to consult it.

[6] See also note 7, *infra.*

formed to the exactions of justice and equity must be rejected because retroactively it has become unlawful" (p. 312).

It is one thing to hold as was done in *Guaranty Trust Co.* v. *United States*, *supra*, p. 142, that under the Litvinov Assignment the United States did not acquire "a right free of a preexisting infirmity" such as the running of the statute of limitations against the Russian Government, its assignor. Unlike the problem presented here and in the *Moscow* case, that holding in no way sanctions the asserted power of New York to deny enforcement of a claim under the Litvinov Assignment because of an overriding policy of the State which denies validity in New York of the Russian decrees on which the assigned claims rest. That power was denied New York in *United States* v. *Belmont*, *supra*. With one qualification to be noted, the *Belmont* case is determinative of the present controversy.

That case involved the right of the United States under the Litvinov Assignment to recover from a custodian or stakeholder in New York funds which had been nationalized and appropriated by the Russian decrees.

This Court, speaking through Mr. Justice Sutherland, held that the conduct of foreign relations is committed by the Constitution to the political departments of the Federal Government; that the propriety of the exercise of that power is not open to judicial inquiry; and that recognition of a foreign sovereign conclusively binds the courts and "is retroactive and validates all actions and conduct of the government so recognized from the commencement of its existence." p. 328. It further held (p. 330) that recognition of the Soviet Government, the establishment of diplomatic relations with it, and the Litvinov Assignment were "all parts of one transaction, resulting in an international compact between the two governments." After stating that "in respect of what was done here, the Executive had authority to speak as the sole organ" of the national government, it added (p. 330): "The assignment and the agreements in connection therewith did not, as in the case of treaties, as that term is used in the treaty making clause of the Constitution (Art. II, § 2) require the advice and consent of the Senate." It held (p. 331) that the "external powers of the United States are to be exercised without regard to state laws or policies. The supremacy of a treaty in this respect has been recognized from the beginning." And it added that "all international compacts and agreements" are to be treated

with similar dignity for the reason that "complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states." p. 331. This Court did not stop to inquire whether in fact there was any policy of New York which enforcement of the Litvinov Assignment would infringe since "no state policy can prevail against the international compact here involved." p. 327.

The New York Court of Appeals in the *Moscow* case (280 N. Y. 309) distinguished the *Belmont* case on the ground that it was decided on the sufficiency of the pleadings, the demurrer to the complaint admitting that under the Russian decree the property was confiscated by the Russian Government and then transferred to the United States under the Litvinov Assignment. But, as we have seen, the Russian decree in question was intended to have an extraterritorial effect and to embrace funds of the kind which are here involved. Nor can there be any serious doubt that claims of the kind here in question were included in the Litvinov Assignment.[7] It is broad and inclusive. It should be interpreted consonantly with the purpose of the compact to eliminate all possible sources of friction between these two great nations. See *Tucker* v. *Alexandroff*, 183 U. S. 424, 437; *Jordan* v. *Tashiro*, 278 U. S. 123, 127. Strict construction would run counter to that national policy. For, as we shall see, the existence of unpaid claims against Russia and its na-

[7] A clarification of the Litvinov Assignment was made in an exchange of letters between the American Charge d'Affairs and the People's Commissar for Foreign Affairs on January 7, 1937. The letter of the former read:

"I have the honor to inform you that it is the understanding of the Government of the United States that the Government of the Union of Soviet Socialist Republics considers that by and upon the formation of the Union of Soviet Socialist Republics and the adoption of the Constitution of 1923 of the Union of Soviet Socialist Republics, the Union of Soviet Socialist Republics acquired the right to dispose of the property, rights, or interests therein located abroad of all corporations and companies which had theretofore been nationalized by decrees of the constituent republics or their predecessors.

"The Government of the United States further understands that it was the purpose and intention of the Government of the Union of Soviet Socialist Republics to assign to the Government of the United States, among other amounts, all the amounts admitted to be due or that may be found to be due not only the Union of Soviet Socialist Republics but also the constituent republics of the Union of Soviet Socialist Republics or their predecessors from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, in litigation in the United States Court of Claims, and that the Government of the Union of Soviet Socialist Republics did release and assign all such amounts to the Government of the United States by virtue of the note addressed by you to the President of the United States on November 16, 1933:

tionals which were held in this country and which the Litvinov assignment was intended to secure, had long been one impediment to resumption of friendly relations between these two great powers.

The holding in the *Belmont* case is therefore determinative of the present controversy unless the stake of the foreign creditors in this liquidation proceeding and the provision which New York has provided for their protection call for a different result.

Fourth: The *Belmont* case forecloses any relief to the Russian corporation. For this Court held in that case (301 U. S. at p. 332): "... our Constitution, laws and policies have no extraterritorial operation, unless in respect of our own citizens. ... What another country has done in the way of taking over property of its nationals, and especially of its corporations, is not a matter for judicial consideration here. Such nationals must look to their own government for any redress to which they may be entitled."

But it is urged that different considerations apply in case of the

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"Will you be good enough to confirm the understanding which the Government of the United States has in this matter, concerning the law of the Russian Socialist Federated Soviet Republic, the Constitution and laws of the Union of Soviet Socialist Republics, and the intention and purpose of the Government of the Union of Soviet Socialist Republics in the above-mentioned assignment?"

The reply of the People's Commissar of Foreign Affairs was:

"In reply to your note of January 7, 1937, I have the honor to inform you that the Government of the Union of Soviet Socialist Republics considers that by and upon the formation of the Union of Soviet Socialist Republics and the adoption of the Constitution of 1923 of the Union of Soviet Socialist Republics, the Union of Soviet Socialist Republics acquired the right to dispose of the property, rights, or interests therein located abroad of all corporations and companies which had theretofore been nationalized by decrees of the constituent republics or their predecessors.

"You are further informed that it was the purpose and intention of the Government of the Union of Soviet Socialist Republics to assign to the Government of the United States, among other amounts, all the amounts admitted to be due or that may be found to be due not only the Union of Soviet Socialist Republics but also the constituent republics of the Union of Soviet Socialist Republics or their predecessors from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, in litigation in the United States Court of Claims, and that the Government of the Union of Soviet Socialist Republics did release and assign all such amounts to the Government of the United States by virtue of the note addressed by me to the President of the United States on November 16, 1933.

"I have the honor, therefore, to confirm the understanding, as expressed in your note of January 7, 1937, which the Government of the United States has in this matter, concerning the law of the Russian Socialist Federated Soviet Republic, the Constitution and laws of the Union of Soviet Socialist Republics, and the intention and purpose of the Government of the Union of Soviet Socialist Republics in the above-mentioned assignment."

foreign creditors[8] to whom the New York Court of Appeals (255 N. Y. 415) ordered distribution of these funds. The argument is that their rights in these funds have vested by virtue of the New York decree; that to deprive them of the property would violate the Fifth Amendment which extends its protection to aliens as well as to citizens; and that the Litvinov Assignment cannot deprive New York of its power to administer the balance of the fund in accordance with its laws for the benefit of these creditors.

At the outset it should be noted that, so far as appears, all creditors whose claims arose out of dealings with the New York branch have been paid. Thus we are not faced with the question whether New York's policy of protecting the so-called local creditors by giving them priority in the assets deposited with the State (*Matter of People*, 242 N. Y. 148, 158-159) should be recognized within the rule of *Clark* v. *Williard*, 294 U. S. 211, or should yield to the Federal policy expressed in the international compact or agreement. *Santovincenzo* v. *Egan*, 284 U. S. 30, 40; *United States* v. *Belmont*, *supra*. We intimate no opinion on that question. The contest here is between the United States and creditors of the Russian corporation who, we assume, are not citizens of this country and whose claims did not arise out of transactions with the New York branch. The United States is seeking to protect not only claims which it holds but also claims of its nationals. H. Rep. No. 865, 76th Cong., 1st Sess. Such claims did not arise out of transactions with this Russian corporation; they are, however, claims against Russia or its nationals. The existence of such claims and their non-payment had for years been one of the barriers to recognition of the Soviet regime by the Executive Department. Graham, Russian-American Relations, 1917-1933: An Interpretation, 28 Am. Pol. Sc. Rev. 387; 1 Hackworth, Digest of International Law (1940) pp. 302-304. The purpose of the discussions leading to the policy of recognition was to resolve "all questions outstanding" between the two nations. Establishment of Diplomatic Relations with the Union of Soviet Socialist Republics, Dept. of State, Eastern European Series, No. 1 (1933), p. 1. Settlement of all American claims against Russia was one method of removing some of the prior objections to recog-

[8] In view of the disposition which we make of this case, we express no view on whether these creditors would be barred from asserting their claims here by virtue of the ruling in Canada Southern Ry. Co. *v.* Gebhard, 109 U. S. 527, 538, that "anything done at the legal home of the corporation, under the authority of such laws, which discharges it from liability there, discharges it everywhere."

nition based on the Soviet policy of nationalization. The Litvinov Assignment was not only part and parcel of the new policy of recognition (*id.*, p. 13); it was also the method adopted by the Executive Department for alleviating in this country the rigors of nationalization. Congress tacitly recognized that policy. Acting in anticipation of the realization of funds under the Litvinov Assignment (H. Rep. No. 865, 76th Cong., 1st Sess.) it authorized the appointment of a Commissioner to determine the claims of American nationals against the Soviet Government. Joint Resolution of August 4, 1939, 53 Stat. 1199.

If the President had the power to determine the policy which was to govern the question of recognition, then the Fifth Amendment does not stand in the way of giving full force and effect to the Litvinov Assignment. To be sure, aliens as well as citizens are entitled to the protection of the Fifth Amendment. *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481. A State is not precluded, however, by the Fourteenth Amendment from according priority to local creditors as against creditors who are nationals of foreign countries and whose claims arose abroad. *Disconto Gesellschaft* v. *Umbreit*, 208 U. S. 570. By the same token, the Federal Government is not barred by the Fifth Amendment from securing for itself and our nationals priority against such creditors. And it matters not that the procedure adopted by the Federal Government is globular and involves a regrouping of assets. There is no Constitutional reason why this Government need act as the collection agent for nationals of other countries when it takes steps to protect itself or its own nationals on external debts. There is no reason why it may not through such devices as the Litvinov Assignment make itself and its nationals whole from assets here before it permits such assets to go abroad in satisfaction of claims of aliens made elsewhere and not incurred in connection with business conducted in this country. The fact that New York has marshaled the claims of the foreign creditors here involved and authorized their payment does not give them immunity from that general rule.

If the priority had been accorded American claims by treaty with Russia, there would be no doubt as to its validity. Cf. *Santovincenzo* v. *Egan*, *supra*. The same result obtains here. The powers of the President in the conduct of foreign relations included the power, without consent of the Senate, to determine the public policy of the United States with respect to the Russian nationali-

zation decrees. "What government is to be regarded here as representative of a foreign sovereign state is a political rather than a judicial question, and is to be determined by the political department of the government." *Guaranty Trust Co.* v. *United States, supra,* p. 137. That authority is not limited to a determination of the government to be recognized. It includes the power to determine the policy which is to govern the question of recognition. Objections to the underlying policy as well as objections to recognition are to be addressed to the political department and not to the courts. See *Guaranty Trust Co.* v. *United States, supra,* p. 138; *Kennett* v. *Chambers,* 14 How. 38, 50-51. As we have noted, this Court in the *Belmont* case recognized that the Litvinov Assignment was an international compact which did not require the participation of the Senate. It stated (301 U. S. pp. 330-331): "There are many such compacts, of which a protocol, a modus vivendi, a postal convention, and agreements like that now under consideration are illustrations." And see *Monaco* v. *Mississippi,* 292 U. S. 313, 331; *United States* v. *Curtiss-Wright Corp.,* 299 U. S. 304, 318. Recognition is not always absolute; it is sometimes conditional. 1 Moore, International Law Digest (1906), pp. 73-74, 1 Hackworth, Digest of International Law (1940), pp. 192-195. Power to remove such obstacles to full recognition as settlement of claims of our nationals (Levitan, Executive Agreements, 35 Ill. L. Rev. 365, 382-385) certainly is a modest implied power of the President who is the "sole organ of the federal government in the field of international relations." *United States* v. *Curtiss-Wright Corp., supra,* p. 320. Effectiveness in handling the delicate problems of foreign relations requires no less. Unless such a power exists, the power of recognition might be thwarted or seriously diluted. No such obstacle can be placed in the way of rehabilitation of relations between this country and another nation, unless the historic conception of the powers and responsibilities of the President in the conduct of foreign affairs (see Moore, Treaties and Executive Agreements, 20 Pol. Sc. Q. 385, 403-417) is to be drastically revised. It was the judgment of the political department that full recognition of the Soviet Government required the settlement of all outstanding problems including the claims of our nationals. Recognition and the Litvinov Assignment were interdependent. We would usurp the executive function if we held that that decision was not final and conclusive in the courts.

"All constitutional acts of power, whether in the executive or in the judicial department, have as much legal validity and obligation as if they proceeded from the legislature; . . . ." The Federalist, No. 64. A treaty is a "Law of the Land" under the supremacy clause (Art. VI, Cl. 2) of the Constitution. Such international compacts and agreements as the Litvinov Assignment have a similar dignity. *United States* v. *Belmont*, *supra*, p. 331. See Corwin, The President, Office & Powers (1940), pp. 228-240.

It is of course true that even treaties with foreign nations will be carefully construed so as not to derogate from the authority and jurisdiction of the States of this nation unless clearly necessary to effectuate the national policy. *Guaranty Trust Co.* v. *United States*, *supra*, p. 143 and cases cited. For example in *Todok* v. *Union State Bank*, 281 U. S. 449, this Court took pains in its construction of a treaty, relating to the power of an alien to dispose of property in this country, not to invalidate the provisions of state law governing such dispositions. Frequently the obligation of a treaty will be dependent on state law. *Prevost* v. *Greneaux*, 19 How. 1. But state law must yield when it is inconsistent with or impairs the policy or provisions of a treaty or of an international compact or agreement. See *Nielsen* v. *Johnson*, 279 U. S. 47. Then the power of a State to refuse enforcement of rights based on foreign law which runs counter to the public policy of the forum (*Griffin* v. *McCoach*, 313 U. S. 498, 506) must give way before the superior Federal policy evidenced by a treaty or international compact or agreement. *Santovincenzo* v. *Egan*, *supra*; *United States* v. *Belmont*, *supra*.

Enforcement of New York's policy as formulated by the *Moscow* case would collide with and subtract from the Federal policy, whether it was premised on the absence of extraterritorial effect of the Russian decrees, the conception of the New York branch as a distinct juristic personality, or disapproval by New York of the Russian program of nationalization.[9] For the *Moscow* case refuses to give effect or recognition in New York to acts of the Soviet Government which the United States by its policy of recognition

[9] In this connection it should be noted that § 977(b) of the New York Civil Practice Act provides for the appointment of a receiver to liquidate local assets of a foreign corporation where, *inter alia*, it has been dissolved, liquidated, or nationalized. Subdivision 19 of that section provides in part:

" . . . such liquidation, dissolution, nationalization, expiration of its existence, or repeal, suspension, revocation or annulment of its charter or

agreed no longer to question. Enforcement of such state policies would indeed tend to restore some of the precise impediments to friendly relations which the President intended to remove on inauguration of the policy of recognition of the Soviet Government. In the first place, such action by New York, no matter what gloss be given it, amounts to official disapproval or non-recognition of the nationalization program of the Soviet Government. That disapproval or non-recognition is in the face of a disavowal by the United States of any official concern with that program. It is in the face of the underlying policy adopted by the United States when it recognized the Soviet Government. In the second place, to the extent that the action of the State in refusing enforcement of the Litvinov Assignment results in reduction or non-payment of claims of our nationals, it helps keep alive one source of friction which the policy of recognition intended to remove. Thus the action of New York tends to restore some of the precise irritants which had long affected the relations between these two great nations and which the policy of recognition was designed to eliminate.

We recently stated in *Hines* v. *Davidowitz*, 312 U. S. 52, 68, that the field which affects international relations is "the one aspect of our government that from the first has been most generally conceded imperatively to demand broad national authority"; and that any state power which may exist "is restricted to the narrowest of limits". There we were dealing with the question as to whether a state statute regulating aliens survived a similar federal statute. We held that it did not. Here we are dealing with an exclusive federal function. If state laws and policies did not yield before the exercise of the external powers of the United States, then our foreign policy might be thwarted. These are delicate matters. If state action could defeat or alter our foreign policy, serious consequences might ensue. The nation as a whole would be held to answer if a State created difficulties with a foreign power. Cf. *Chy Lung* v. *Freeman*, 92 U. S. 275, 279-280. Certainly the conditions for "enduring friendship" between the nations, which the policy of recog-

organic law in the country of its domicile, or any confiscatory law or decree thereof, shall not be deemed to have any extra-territorial effect or validity as to the property, tangible or intangible, debts, demands or choses in action of such corporation within the state or any debts or obligations owing to such corporation from persons, firms or corporations residing, sojourning or doing business in the state."

nition in this instance was designed to effectuate,[10] are not likely to flourish where contrary to national policy a lingering atmosphere of hostility is created by state action.

Such considerations underly the principle of *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 302-303, that when a revolutionary government is recognized as a *de jure* government, "such recognition is retroactive in effect and validates all the actions and conduct of the government so recognized from the commencement of its existence." They also explain the rule expressed in *Underhill* v. *Hernandez*, 168 U. S. 250, 252, that "the courts of one country will not sit in judgment on the acts of the government of another done within its own territory."

The action of New York in this case amounts in substance to a rejection of a part of the policy underlying recognition by this nation of Soviet Russia. Such power is not accorded a State in our constitutional system. To permit it would be to sanction a dangerous invasion of Federal authority. For it would "imperil the amicable relations between governments and vex the peace of nations." *Oetjen* v. *Central Leather Co.*, *supra*, p. 304. It would tend to disturb that equilibrium in our foreign relations which the political departments of our national government had diligently endeavored to establish.

We repeat that there are limitations on the sovereignty of the States. No State can rewrite our foreign policy to conform to its own domestic policies. Power over external affairs is not shared by the States; it is vested in the national government exclusively. It need not be so exercised as to conform to state laws or state policies whether they be expressed in constitutions, statutes, or judicial decrees. And the policies of the States become wholly irrelevant to judicial inquiry, when the United States, acting within its constitutional sphere, seeks enforcement of its foreign policy in the courts. For such reasons, Mr. Justice Sutherland stated in *United States* v. *Belmont*, *supra*, p. 331, "In respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear. As to such purposes the State of New York does not exist."

We hold that the right to the funds or property in question became vested in the Soviet Government as the successor to the First

[10] Establishment of Diplomatic Relations with the Union of Soviet Socialist Republics, *supra* note 1, p. 20.

Russian Insurance Co.; that this right has passed to the United States under the Litvinov Assignment; and that the United States is entitled to the property as against the corporation and the foreign creditors.

The judgment is reversed and the cause is remanded to the Supreme Court of New York for proceedings not inconsistent with this opinion.

It is so ordered.

Mr. Justice REED and Mr. Justice JACKSON did not participate in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 42.—October Term, 1941.

The United States of America, Petitioner, *vs.* Louis H. Pink, Superintendent of Insurance of the State of New York, et al.	On Writ of Certiorari to the Supreme Court of the State of New York.

[February 2, 1942.]

Mr. Justice Frankfurter.

The nature of the controversy makes it appropriate to add a few observations to my Brother Douglas' opinion.

Legal ideas like other organisms cannot survive severance from their congenial environment. Concepts like "situs" and "jurisdiction" and "comity" summarize views evolved by the judicial process, in the absence of controlling legislation, for the settlement of domestic issues. To utilize such concepts for the solution of controversies international in nature, even though they are presented to the courts in the form of a private litigation, is to invoke a narrow and inadmissible frame of reference.

The expropriation decrees of the U.S.S.R. gave rise to extensive litigation among various classes of claimants to funds belonging to Russian companies doing business or keeping accounts abroad. England and New York were the most active centers of this litigation. The opinions in the many cases before their courts constitute a sizeable library. They all derive from a single theme—the effect of the Russian expropriation decrees upon particular claims, in some cases before and in some cases after recognition of the U.S.S.R., either *de jure* or *de facto*. One cannot read this body of judicial opinions, in the Divisional Court, the Court of Appeal and the House of Lords, in the New York Supreme Court, the Appellate Division, and the Court of Appeals, and not be left with the conviction that they are the product largely of casuistry, confusion, and indecision. See Jaffe, Judicial Aspects of Foreign Relations, *passim*. The difficulties were inherent in the problems

that confronted the courts. They were due to what Chief Judge Cardozo called "the hazards and embarrassments growing out of the confiscatory decrees of the Russian Soviet Republic", *Matter of People (Russian Reinsurance Co.)*, 255 N. Y. 415, 420, and to the endeavor to adjust these "hazards and embarrassments" to "the largest considerations of public policy and justice", *James & Co.* v. *Second Russian Insurance Co.*, 239 N. Y. 248, 256, when private claims to funds covered by the expropriation decrees were before the courts, particularly at a time when non-recognition was our national policy.

The opinions show both the English and the New York courts struggling to deal with these business consequences of major international complications through the application of traditional judicial concepts. "Situs", "jurisdiction", "comity", "domestication" and "dissolution" of corporations, and other legal ideas that often enough in litigation of a purely domestic nature prove their limitations as instruments for solution or even as means for analysis, were pressed into service for adjudicating claims whose international implications could not be sterilized. This accounts for the divergence of views among the judges and for such contradictory and confusing rulings as the series of New York cases, from *Wulfsohn* v. *Soviet Republic*, 234 N. Y. 372, to the ruling now under review, *Moscow Fire Ins. Co.* v. *Bank of New York and Trust Co.*, 280 N. Y. 286, accounts for *Russian Commercial and Industrial Bank* v. *Comptoir d'Escompte de Mulhouse*, [1925] A. C. 112, compared with *Lazard Brothers & Co.* v. *Midland Bank*, [1933] A. C. 289, and for the fantastic decision in *Lehigh Valley R. Co* v. *State of Russia*, 21 F. 8d 396, in which the Kerensky régime was treated as th existing Russian government a decade after its extinction.

Courts could hardly escape perplexities when citizens asserted claims to Russian funds within the control of the forum. But a totally different situation was presented when all claims of local creditors were satisfied and only the conflicting claims of Russia and of former Russian creditors were involved. In the particular circumstances of Russian insurance companies doing business in New York, the State Superintendent of Insurance took possession of the assets of the Russian branches in New York to conserve them for the benefit of those entitled to them. Liquidation followed, domestic creditors and policy holders were paid, and the Superin-

tendent found a large surplus on his hands. As statutory liquidator, the Superintendent of Insurance took the ground that "in view of the hazards and uncertainties of the Russian situation, the surplus should not be paid to any one, but should be left in his hands indefinitely, until a government recognized by the United States shall function in the territory of what was once the Russian Empire." 255 N. Y. 415, 421. So the Appellate Division decreed. 229 App. Div. 637. But the Court of Appeals reversed and the scramble among the foreign claimants was allowed to proceed. 255 N. Y. 415. The Court of Appeals held that the retention of the surplus funds in the custody of the Superintendent of Insurance until the international relations between the United States and Russia had been formalized "did not solve the problem. It adjourned it *sine die*." But adjournment, it may be suggested, is sometimes a constructive interim solution to avoid a temporizing and premature measure giving rise to new difficulties. Such I believe to have been the mischief that was bound to follow the rejection of the Superintendent's policy of conservation of the surplus Russian funds until recognition. Their disposition was inescapably entangled in recognition.

In the immediate case the United States sues, in effect, as the assignee of the Russian government for claims by that government against the Russian Insurance Company for monies in deposit in New York to which no American citizen makes claim. No manner of speech can change the central fact that here are monies which belonged to a Russian company and for which the Russian government has decreed payment to itself.

And so the question is whether New York can bar Russia from realizing on its decrees against these funds in New York after formal recognition by the United States of Russia and in light of the circumstances that led up to recognition and the exchange of notes that attended it. For New York to deny the effectiveness of these Russian decrees under such circumstances would be to oppose, at least in some respects, its notions as to the effect which should be accorded recognition as against that entertained by the national authority for conducting our foreign affairs. And the result is the same whether New York accomplishes it because its courts invoke judicial views regarding the enforcement of foreign expropriation decrees, or regarding the survival in New York of a Russian business which according to Russian law had ceased to exist, or regarding the power of New York courts over funds of Russian companies

owing from New York creditors. If this Court is not bound by the construction which the New York Court of Appeals places upon complicated transactions in New York in determining whether they come within the protection of the Constitution against impairing the obligations of contract, we certainly should not be bound by that court's construction of transactions so entangled in international significance as the status of New York branches of Russian companies and the disposition of their assets. Compare *Appleby* v. *City of New York*, 271 U. S. 364 and *Irving Trust Company* v. *Day*, 314 U. S. —. When the decision of a question of fact or of local law is so interwoven with the decision of a question of national authority that the one necessarily involves the other, we are not foreclosed by the state court's determination of the facts or of the local law. Otherwise national authority could be frustrated by local rulings. See *Crowell* v. *Knights of Pythias*, 225 U. S. 246; *Davis* v. *Wechsler*, 263 U. S. 22.

It is not consonant with the sturdy conduct of our foreign relations that the effect of Russian decrees upon Russian funds in this country should depend on such gossamer distinctions as those by which courts have determined that Russian branches survive the death of their Russian origin. When courts deal with such essentially political phenomena as the taking over of Russian businesses by the Russian government by resorting to the forms and phrases of conventional corporation law, they inevitably fall into a dialectic quagmire. With commendable candor, the House of Lords frankly confessed as much when it practically overruled *Russian Commercial and Industrial Bank* v. *Comptoir d'Escompte de Mulhouse, supra*, saying through Lord Wright, "the whole matter has now to be reconsidered in the light of new evidence and of the historical evolution of ten years." *Lazard Brothers & Co.* v. *Midland Bank*, [1933] A. C. 289, 300.

For we are not dealing here with physical property—whether chattels or realty. We are dealing with intangible rights, with choses in action. The fact that these claims were reduced to money does not change the character of the claims and certainly is too tenuous a thread on which to determine issues affecting the relation between nations. Corporeal property may give rise to rules of law which, we have held, even in purely domestic controversies ought not to be transferred to the adjudication of impalpable claims such as are here in controversy. *Curry* v. *McCanless*, 307 U. S. 357, 363 *et seq.*

As between the states, due regard for their respective governmental acts is written into the Constitution by the Full Faith and Credit Clause (Art. IV, § 1). But the scope of its operation—when may the policy of one state deny the consequences of a transaction authorized by the laws of another—has given rise to a long history of judicial subtleties which hardly commend themselves for transfer to the solution of analogous problems between friendly nations. See *Huntington* v. *Attrill*, 146 U. S. 657; *Finney* v. *Guy*, 189 U. S. 335; *Milwaukee County* v. *White Co.*, 296 U. S. 268; *Pacific Ins. Co.* v. *Comm'n*, 306 U. S. 493, 502; *Pink* v. *A. A. A. Highway Express*, 314 U. S. —.

For more than fifteen years formal relations between the United States and Russia were broken because of serious differences between the two countries regarding the consequences to us of two major Russian policies. This complicated process of friction, abstention from friendly relations, efforts at accommodation, and negotiations for removing the causes of friction, are summarized by the delusively simple concept of "non-recognition". The history of Russo-American relations leaves no room for doubt that the two underlying sources of difficulty were Russian propaganda and expropriation. Had any state court during this period given comfort to the Russian views in this contest between its government and ours, it would, to that extent, have interfered with the conduct of our foreign relations by the Executive even if it had purported to do so under the guise of enforcing state law in a matter of local policy. On the contrary, during this period of non-recognition New York denied Russia access to her courts and did so on the single and conclusive ground: "We should do nothing to thwart the policy which the United States has adopted." *Russian Republic* v. *Cibrario*, 235 N. Y. 255, 263. Similarly, no invocation of a local rule governing "situs" or the survival of a domesticated corporation, however applicable in an ordinary case, is within the competence of a state court if it would thwart to any extent "the policy which the United States has adopted" when the President reestablished friendly relations in 1933.

And it would be thwarted if the judgment below were allowed to stand.

That the President's control of foreign relations includes the settlement of claims is indisputable. Thus, referring to the adhesion of the United States to the Dawes Plan, Secretary of State

Hughes reported "that this agreement was negotiated under the long-recognized authority of the President of the United States to arrange for the payment of claims in favor of the United States and its nationals. The exercise of this authority has many illustrations, one of which is the Agreement of 1901 for the so-called Boxer Indemnity." (Secretary Hughes to President Coolidge, February 3, 1925, MS., Department of State, quoted in 5 Hackworth, Digest of Int. Law, c. 16, § 514.) The President's power to negotiate such a settlement is the same whether it is an isolated transaction between this country and a friendly nation, or is part of a complicated negotiation to restore normal relations, as was the case with Russia.

That the power to establish such normal relations with a foreign country belongs to the President is equally indisputable. Recognition of a foreign country is not a theoretical problem or an exercise in abstract symbolism. It is the assertion of national power directed towards safeguarding and promoting our interests and those of civilization. Recognition of a revolutionary government normally involves the removal of areas of friction. As often as not, areas of friction are removed by the adjustment of claims pressed by this country on behalf of its nationals against a new régime.

Such a settlement was made by the President when this country resumed normal relations with Russia. The two chief barriers to renewed friendship with Russia—intrusive propaganda and the effects of expropriation decrees upon our nationals—were at the core of our negotiations in 1933, as they had been for a good many years. The exchanges between the President and Ambassador Litvinov must be read not in isolation but as the culmination of difficulties and dealings extending over fifteen years. And they must be read not as self-contained technical documents, like a marine insurance contract or a bill of lading, but as characteristically delicate and elusive expressions of diplomacy. The draftsmen of such notes must save sensibilities and avoid the explicitness on which diplomatic negotiations so easily founder.

The controlling history of the Soviet régime and of this country's relations with it must be read between the lines of the Roosevelt-Litvinov Agreement. One needs to be no expert in Russian law to know that the expropriation decrees intended to sweep the assets of Russian companies taken over by that government into Russia's control no matter where those assets were credited.

Equally clear is it that the assignment by Russia meant to give the United States as part of the comprehensive settlement everything that Russia claimed under its laws against Russians. It does violence to the course of negotiations between the United States and Russia and to the scope of the final adjustment to assume that a settlement thus made on behalf of the United States—to settle both money claims and to soothe feelings—was to be qualified by the variant notions of the courts of the forty-eight states regarding "situs" or "jurisdiction" over intangibles or the survival of extinct Russian corporations. In our dealings with the outside world the United States speaks with one voice and acts as one; unembarrassed by the complications as to domestic issues which are inherent in the distribution of political power between the national government and the individual states.

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Mr. Chief Justice Stone, dissenting.

I think the judgment should be affirmed.

As my brethren are content to rest their decision on the authority of the dictum in *United States* v. *Belmont*, 301 U. S. 324, without the aid of any pertinent decision of this Court, I think a word should be said of the authority and reasoning of the *Belmont* case and of the principles which I think are controlling here.

In the *Belmont* case the United States brought suit in the federal court to recover a debt alleged to be due upon a deposit account of a Russian national with a New York banker. The complaint set up the confiscation of the account by decrees of the Soviet Government and the transfer of the debt to the United States by the Litvinov assignment, concurrently with our diplomatic recognition of that Government. It was not alleged, nor did it appear, that the New York courts had, subsequent to recognition, refused to give effect to the Soviet decrees as operating to transfer the title of Russian nationals to property located in New York. No such national or any adverse claimant was a party to the suit. In sustaining the complaint against demurrer this Court said (p. 332): "In so holding, we deal only with the case as now presented and with the parties now before us. We do not consider the status of adverse claims, if there be any, of others not parties to this action. And nothing we have said is to be construed as foreclosing the assertion of any such claim to the fund involved, by intervention or other appropriate proceeding. We decide only

that the complaint alleges facts sufficient to constitute a cause of action against the respondents."

The questions thus explicitly reserved are presented by the case now before us. The courts of New York, in the exercise of the constitutional authority ordinarily possessed by state courts to declare the rules of law applicable to property located within their territorial limits, have refused to recognize the Soviet decrees as depriving creditors and other claimants representing the interests of the insurance company of their rights under New York law. Numerous individual creditors and other claimants, and the New York Superintendent of Insurance, who represents all claimants, are parties to the present suit and assert their claims to the exclusion of the United States.

It is true that this Court, in the *Belmont* case, indulged in some remarks as to the effect on New York law of our diplomatic recognition of the Soviet Government and of the assignment of all its claims against American nationals to the United States. Upon the basis of these observations it thought that the New York courts were bound to recognize and apply the Soviet decrees to property which was located in New York when the decrees were promulgated. But all this was predicated upon the mistaken assumption that by disregarding the decrees the New York courts would be giving an extraterritorial effect to New York law. These observations were irrelevant to the decision there announced and, for reasons shortly to be given, I think plainly inapplicable here. They were but *obiter dicta* which, so far as they have not been discredited by our decision in *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, and so far as they now merit it "may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision." Chief Justice Marshall in *Cohens* v. *Virginia*, 6 Wheat. 264, 399; Mr. Justice Sutherland in *Williams* v. *United States*, 289 U. S. 553, 568.

We have no concern here with the wisdom of the rules of law which the New York courts have adopted in this case or their consonance with the most enlightened principles of jurisprudence. State questions do not become federal questions because they are difficult or because we may think that the state courts have given wrong answers to them. The only questions before us are whether New York has constitutional authority to adopt its own rules of law defining rights in property located in the state, and if so whether

that authority has been curtailed by the exercise of a superior federal power by recognition of the Soviet Government and acceptance of its assignment to the United States of claims against American nationals, including the New York property.

I shall state my grounds for thinking that the pronouncements in the *Belmont* case, on which the Court relies for the answer to these questions, are without the support of reason or accepted principles of law. No one doubts that the Soviet decrees are the acts of the government of the Russian state which is sovereign in its own territory, and that in consequence of our recognition of that government they will be so treated by our State Department. As such, when they affect property which was located in Russia at the time of their promulgation, they are subject to inquiry if at all only through our State Department and not in our courts. *Underhill* v. *Hernandez*, 168 U. S. 250; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Ricaud* v. *American Metal Co.*, 246 U. S. 304, 308-10; *Salimoff & Co.* v. *Standard Oil Co.*, 262 N. Y. 220. But the property to which the New York judgment relates has at all relevant times been in New York in the custody of the Superintendent of Insurance as security for the policies of the insurance company, and is now in the Superintendent's custody as Liquidator acting under the direction of the New York courts. *United States* v. *Bank of New York Co.*, 296 U. S. 463, 478-79. In administering and distributing the property thus within their control, the New York courts are free to apply their own rules of law including their own doctrines of conflict of laws, see *Erie Railroad* v. *Tompkins*, 304 U. S. 64, 78; *Griffin* v. *McCoach*, 313 U. S. 498; *Kryger* v. *Wilson*, 242 U. S. 171, 176, except insofar as they are subject to the requirements of the full faith and credit clause—a clause applicable only to the judgments and public acts of states of the Union and not those of foreign states. *Aetna Life Insurance Co.* v. *Tremblay*, 223 U. S. 185; cf. *Bank of Augusta* v. *Earle*, 13 Pet. 519, 589-90; *Bond* v. *Hume*, 243 U. S. 15, 21-22.

This Court has repeatedly decided that the extent to which a state court will follow the rules of law of a recognized foreign country in preference to its own is wholly a matter of comity, and that in the absence of relevant treaty obligations the application in the courts of a state of its own rules of law rather than those of a foreign country raises no federal question. *Rose* v. *Himely*, 4

Cranch 241; *Harrison* v. *Sterry*, 5 Cranch 289; *United States* v. *Crosby*, 7 Cranch 115; *Oakey* v. *Bennett*, 11 How. 33, 43-46; *Hilton* v. *Guyot*, 159 U. S. 113, 165-66; *Disconto Gesellschaft* v. *Umbreit*, 208 U. S. 570; cf. *Baglin* v. *Cusenier*, 221 U. S. 580, 594-97; *United States* v. *Guaranty Trust Co.*, 293 U. S. 340, 345-47. This is equally the case when a state of the Union refuses to apply the law of a sister state, if there is no question of full faith and credit, *Kryger* v. *Wilson*, *supra*; *Finney* v. *Guy*, 189 U. S. 335, 340, 346; *Alropa Corp.* v. *Kirchwehm*, 313 U. S. 549; see *Milwaukee County* v. *White Co.*, 296 U. S. 268, 272-73, or due process, *Home Ins. Co.* v. *Dick*, 281 U. S. 397. So clearly was this thought to be an appropriate exercise of the power of a forum over property within its territorial jurisdiction that this Court, in *Ingenohl* v. *Olsen & Co.*, 273 U. S. 541, 544-45, accepted as beyond all doubt the right of the British courts in Hong Kong to refuse recognition to the American alien property custodian's transfer of exclusive rights to the use of a trademark in Hong Kong, and the Court gave effect here to the Hong Kong judgment.

In the application of this doctrine this Court has often held that a state following its own law and policy may refuse to give effect to a transfer made elsewhere of property which is within its own territorial limits. *Green* v. *Van Buskirk*, 5 Wall. 307, 311-12; *Hervey* v. *Rhode Island Locomotive Works*, 93 U. S. 664; *Security Trust Co.* v. *Dodd, Mead & Co.*, 173 U. S. 624; *Clark* v. *Williard*, 292 U. S. 112, 122; *Clark* v. *Williard*, 294 U. S. 211. So far is a state free in this respect that the full faith and credit clause does not preclude the attachment by local creditors of the property within the state of a foreign corporation, all of whose property has been previously transferred in the state of its incorporation to a statutory successor for the benefit of creditors. *Clark* v. *Williard*, *supra*; *Fischer* v. *American United Life Ins. Co.*, No. 91, decided this term. Due process under the Fifth Amendment, the benefits of which extend to alien friends as well as to citizens, *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481, does not call for any different conclusion. *Disconto Gesellschaft* v. *Umbreit*, *supra*, 579-80.

At least since 1797, *Barclay* v. *Russell*, 3 Vesey, Jr., 424, 428, 433, the English courts have consistently held that foreign confiscatory decrees do not operate to transfer title to property located in England even if the decrees were so intended, whether the for-

eign government has or has not been recognized by the British Government. *Lecouturier* v. *Rey*, [1910] A. C. 262, 265. Cf. also *Folliott* v. *Ogden*, 1 H. Black. 123, 135-36, affirmed 3 T. R. 726, affirmed, 4 Brown's Cases in Parl., 111; and *Wolff* v. *Oxholm*, 6 M. & S. 92, both of which may have carried the doctrine of non-recognition of foreign confiscatory decrees even further. See Holdsworth, The History of Acts of State in English Law, 41 Columbia L. Rev. 1313, 1325-26. The English courts have applied this rule in litigation arising out of the Russian decrees, holding that they are not effectual to transfer title to property situated in Great Britain. *Sedgwick Collins & Co.* v. *Rossia Insurance Co.*, [1926] 1 K. B. 1, 15, affirmed, [1927] A. C. 95; *The Jupiter* (*No. 3*), [1927] P. 122, 144-46, affirmed, [1927] P. 250, 253-55; *In re Russian Bank for Foreign Trade*, [1933] 1 Ch. 745, 767-68. The same doctrine has prevailed in the case of the Spanish confiscatory decrees, *Banco de Vizcaya* v. *Don Alfonso*, [1935] 1 K. B. 140, 144-45, as well as with respect to seizures by the American alien property custodian. *Sutherland* v. *Administrator of German Property*, [1934] 1 K. B. 423; and see the decision of the British court for Hong Kong discussed in *Ingenohl* v. *Olsen & Co.*, *supra*, and the Privy Council's decision in *Ingenohl* v. *Wing On & Co.*, 44 Patents Journal 343, 359-60. In no case in which there was occasion to decide the question has recognition been thought to have subordinated the law of the forum, with respect to property situated within its territorial jurisdiction, to that of the recognized state. Never has the forum's refusal to follow foreign transfers of title to such property been considered inconsistent with the most friendly relations with the recognized foreign government, or even with an active military alliance at the time of the transfer.

It is plain that under New York law the claimants in this case, both creditors and those asserting rights of the insurance company, have enforcible rights with respect to the property located there which have been recognized though not created by the judgments of its courts. The conclusion is inescapable that had there been no assignment and this suit had been maintained by the Soviet Government subsequent to recognition, or by a private individual claiming under an assignment from it, the decision of the New York court would have presented no question reviewable here.

The only question remaining is whether the circumstances in the present case that the Russian decrees preceded recognition and that the assignment was to the United States, which here appears in the role of plaintiff, call for any different result. If they do, then recognition and the assignment have operated to give to the United States rights which its assignor did not have. They have compelled the state to surrender its own rules of law applicable to property within its limits, and to substitute rules of Russian law for them. A potency would thus be attributed to the recognition and assignment which is lacking to the full faith and credit clause of the Constitution. See *Clark* v. *Williard, supra; Fischer* v. *American United Life Ins. Co., supra.*

In deciding any federal question involved, it can make no difference to us whether New York has chosen to express its public policy by statute or merely by the common law determinations of its courts. *Erie Railroad* v. *Tompkins, supra; Skiriotes* v. *Florida*, 313 U. S. 69, 79; *Hebert* v. *Louisiana*, 272 U. S. 312, 316. The state court's repeated declaration of a policy of treating the New York branch of the insurance company as a "complete and separate organization" would permit satisfaction of whatever claims of foreign creditors, as well as those of sister states, that New York deems provable against the local fund. But if my brethren are correct in concluding that all foreign creditors must be deprived of access to the fund, it would seem to follow—since the Soviet decrees have exempted no class of creditors—that the rights of creditors in New York or in sister states, or any other rights in the property recognized by New York law, must equally be ousted by virtue of the extraterritorial effect given to the decrees by the present decision. For statutory priorities of New York policyholders or New York lienholders, and the common law priorities and system of distribution which the judgment below endeavored to effectuate and preserve intact, must alike yield to the superior force said to have been imparted to the Soviet decrees by the recognition and assignment. Nothing in the Litvinov assignment or in the negotiations for recognition suggests an intention to impose upon the states discriminations between New York and other creditors which would sustain the former's liens while obliterating those of the latter. If the Litvinov assignment overrides state policies which protect foreign creditors, it can hardly be thought to do less to domestic creditors, whether of New York or a sister state.

I assume for present purposes that these sweeping alterations of the rights of states and of persons could be achieved by treaty or even executive agreement, although we are referred to no authority which would sustain such an exercise of power as is said to have been exerted here by mere assignment unratified by the Senate. It is true that in according recognition and in establishing friendly relations with a foreign country this Government speaks for all the forty-eight states. But it was never true that recognition alters the substantive law of any state or prescribes uniform state law for the nationals of the recognized country. On the contrary it does not even secure for them equality of treatment in the several states or equal treatment with citizens in any state save as the Constitution demands it. *Patsone* v. *Pennsylvania*, 232 U. S. 138; *Terrace* v. *Thompson*, 263 U. S. 197; *Clarke* v. *Deckebach*, 274 U. S. 392 and cases cited. Those are ends which can be achieved only by the assumption of some form of obligation expressed or fairly to be inferred from its words.

Recognition, like treaty making, is a political act and both may be upon terms and conditions. But that fact no more forecloses this Court, where it is called upon to adjudicate private rights, from inquiry as to what those terms and conditions are than it precludes, in like circumstances, a court's ascertaining the true scope and meaning of a treaty. Of course the national power may by appropriate constitutional means override the power of states and the rights of individuals. But without collision between them there is no such loss of power or impairment of rights, and it cannot be known whether state law and private rights collide with political acts expressed in treaties or executive agreements until their respective boundaries are defined.

It would seem therefore that in deciding this case some inquiry should have been made to ascertain what public policy or binding rule of conduct with respect to state power and individual rights has been proclaimed by the recognition of the Soviet Government and the assignment of its claims to the United States. The mere act of recognition and the bare transfer of the claims of the Soviet Government to the United States can of themselves hardly be taken to have any such effect, and they can be regarded as intended to do so only if that purpose is made evident by their terms, read in the light of diplomatic exchanges between the two countries and of the surrounding circumstances.

Even when courts deal with the language of diplomacy, some foundation must be laid for inferring an obligation where previously there was none, and some expression must be found in the conduct of foreign relations which fairly indicates an intention to assume it. Otherwise courts rather than the executive may shape and define foreign policy which the executive has not adopted.

We are not pointed to anything on the face of the documents or in the diplomatic correspondence which even suggests that the United States was to be placed in a better position with respect to the claim which it now asserts, than was the Soviet Government and nationals. Nor is there any intimation in them that recognition was to give to prior public acts of the Soviet Government any greater extraterritorial effect than attaches to such acts occurring after recognition—acts which by the common understanding of English and American courts are ordinarily deemed to be without extraterritorial force, and which in any event have never before been considered to restrict the power of the states to apply their own rules of law to foreign owned property within their territory. As we decided in *Guaranty Trust Co.* v. *United States, supra*, 143, and as the opinion of the Court now appears to concede, there is nothing in any of the relevant documents "to suggest that the United States was to acquire or exert any greater rights than its transferor or that the President by mere executive action purported or intended to alter or diminish the rights of the [New York] debtor with respect to any assigned claims, or that the United States, as assignee, is to do more than the Soviet Government could have done after diplomatic recognition—that is, collect the claims in conformity to local law".

Recognition opens our courts to the recognized government and its nationals, see *Guaranty Trust Co.* v. *United States, supra*, 140. It accepts the acts of that government within its own territory as the acts of the sovereign, including its acts as a *de facto* government before recognition, see *Underhill* v. *Hernandez, supra; Oetjen* v. *Central Leather Co., supra; Ricaud* v. *American Metal Co., supra*. But until now recognition of a foreign government by this Government has never been thought to serve as a full faith and credit clause compelling obedience here to the laws and public acts of the recognized government with respect to property and transactions in this country. One could as well argue that by the Soviet Government's recognition of our own government, which accompanied the transactions now under consideration, it had

undertaken to apply in Russia the New York law applicable to Russian property in New York. Cf. *Ingenohl* v. *Olsen & Co., supra; Pacific Ins. Co.* v. *Comm'n*, 306 U. S. 493, 501-02.

In *Guaranty Trust Co.* v. *United States, supra*, this Court unanimously rejected the contention that the recognition of the Soviet Government operated to curtail or impair rights derived from the application of state laws and policy within the state's own territory. It was argued by the Government that recognition operated retroactively for the period of the *de facto* government to set aside rights acquired in the United States in consequence of this government's prior recognition of the Russian Provisional Government. This argument we said, page 140, "ignores the distinction between the effect of our recognition of a foreign government with respect to its acts within its own territory prior to recognition, and the effect upon previous transactions consummated here between its predecessor and our own nationals. The one operates only to validate to a limited extent acts of a *de facto* government which by virtue of the recognition, has become a government *de jure*. But it does not follow that recognition renders of no effect transactions here with a prior recognized government in conformity to the declared policy of our own Government." Even though the two governments might have stipulated for alteration by this Government of its municipal law, and the consequent surrender of the rights of individuals, the substance of the Court's decision was that such an abdication of domestic law and policy is not a necessary or customary incident of recognition or fairly to be inferred from it. No more can recognition be said to imply a deprivation of the constitutional rights of states of the Union, and of individuals arising out of their laws and policy which are binding on the Federal Government except as the act of recognition is accompanied by some affirmative exercise of federal power which purports to set them aside.

Nor can I find in the surrounding circumstances or in the history of the diplomatic relations of the two countries any basis for saying that there was any policy of either to give a different or larger effect to recognition and the assignment than would ordinarily attach to them. It is significant that the account of the negotiations published by the State Department (Establishment of Diplomatic Relations with the Union of Soviet Socialist Republics, Eastern European Series No. 1), and the report of subsequent

negotiations for adjustment of the claims of the two countries submitted to Congress by the Secretary of State (H. Rep. No. 865, 76th Cong., 1st Sess.) give no intimation of such a policy. Even the diplomatic correspondence between the two countries of January 7, 1937, to which the opinion of the Court refers, and which occurred long after the United States had entered the Moscow Fire Insurance Company litigation, merely repeated the language of the assignment without suggesting that its purpose had been to override applicable state law.

That the assignment after recognition had wide scope for application without reading into it any attempt to set aside our local laws and rights accruing under them is evident. It was not limited in its application to property alleged to be confiscated under the Soviet decrees. Included in the assignment by its terms were all "amounts admitted to be due . . . that may be found to be due it [the Soviet Government], as the successor of prior Governments of Russia, or otherwise, from American nationals". It included claims of the prior governments of Russia, not arising out of confiscatory decrees, and also claims like that of the Russian Volunteer Fleet, growing out of our own expropriation during the war of the property of Russian nationals. The assignment was far from an idle ceremony if treated as transferring only the rights which it purports to assign. Large sums of money have already been collected under it and other amounts are in process of collection without overturning the law of the states where the claims have been asserted.[1]

At the time of the assignment it was not known what position the courts of this country would take with respect to property here, claimed to have been confiscated by the Soviet decrees. But it must have been known to the two governments that the English courts, notwithstanding British recognition of the Soviet government, had refused to apply the Soviet decrees as affecting property located in England. *Sedgwick Collins & Co.* v. *Rossia Insurance Co.*, *supra*; *The Jupiter* (*No. 3*), *supra*; *In re Russian Bank for Foreign Trade*, *supra*. It must also have been known that the similar views expressed by the New York courts before recognition with respect to property situated in New York raised at least a strong possibility

[1] By June 30, 1938, the sums collected by virtue of the Litvinov assignment amounted to $1,706,443. Report of the Attorney General for 1938, p. 122. Other claims are apparently still in litigation. See the Report for 1939, p. 99; also H. Rep. No. 865, 76th Cong., 1st Sess., p. 2.

that mere recognition would not alter the result in that state. *Sokoloff* v. *National City Bank*, 239 N. Y. 158, 167-69; *James & Co.* v. *Second Russian Ins. Co.*, 239 N. Y. 248, 257; *Joint Stock Co.* v. *National City Bank*, 240 N. Y. 368; *Petrogradsky M. K. Bank* v. *National City Bank*, 253 N. Y. 23, 29. The assignment plainly contemplated that this, like every other question affecting liability, was to be litigated in the courts of this country, since the assignment only purported to assign amounts admitted to be due or "that may be found to be due." It was only in the courts where the debtor or the property was located that the amounts assigned would normally be "found to be due". Cf. *United States* v. *Bank of New York*, *supra*.

By transferring claims of every kind, against American nationals, to the United States and leaving to it their collection, the parties necessarily remitted to the courts of this country the determination of the amounts due upon this Government's undertaking to report the amounts collected as "preparatory to a final settlement of the claims and counterclaims" asserted by the two governments. They thus ended the necessity of diplomatic discussion of the validity of the claims, and so removed a probable source of friction between the two countries. In all this I can find no hint that the rules of decision in American courts were not to be those afforded by the law customarily applied in those courts. But if it was the purpose of either government to override local law and policy of the states and to prescribe a different rule of decision from that hitherto recognized by any court, it would seem to have been both natural and needful to have expressed it in some form of undertaking indicating such an intention. The only obligation to be found in the assignment and its acknowledgment by the President is that of the United States, already mentioned, to report the amounts collected. This can hardly be said to be an undertaking to strike down valid defenses to the assigned claims. Treaties, to say nothing of executive agreements and assignments which are mere transfers of rights, have hitherto been construed not to override state law or policy unless it is reasonably evident from their language that such was the intention. *Guaranty Trust Co.* v. *United States*, *supra*, 143; *Toplok* v. *Union State Bank*, 281 U. S. 449, 454; *Rocca* v. *Thompson*, 223 U. S. 317, 329-31; *Disconto Gesellschaft* v. *Umbreit*, *supra*, 582; *Pearl Assur. Co.* v. *Harrington*, 38 F. Supp. 411, 413-14, affirmed, 313 U. S. 549; *Pat-*

sons v. *Pennsylvania*, 232 U. S. 138, 145-46; cf. *Liverpool Ins. Co.* v. *Massachusetts*, 10 Wall. 566, 568, 576-77. The practical consequences of the present decision would seem to be, in every case of recognition of a foreign government, to foist upon the executive the responsibility for subordinating domestic to foreign law in conflicts cases, whether intended or not, unless such a purpose is affirmatively disclaimed.

Under our dual system of government there are many circumstances in which the legislative and executive branches of the national government may, by affirmative action expressing its policy, enlarge the exercise of federal authority and thus diminish the power which otherwise might be exercised by the states. It is indispensable to the orderly administration of the system that such alteration of powers and the consequent impairment of state and private rights should not turn on conceptions of policy which, if ever entertained by the only branch of the government authorized to adopt it, has been left unexpressed. It is not for this Court to adopt policy, the making of which has been by the Constitution committed to other branches of the government. It is not its function to supply a policy where none has been declared or defined and none can be inferred.

Mr. Justice ROBERTS joins in this opinion.